

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 510

MARKET STREET RAILWAY COMPANY,
APPELLANT,

vs.

RAILROAD COMMISSION OF THE STATE OF CALI-
FORNIA, FRANCK R. HAVENNER, C. C. BAKER,
ET AL., ETC.

No. 511

MARKET STREET RAILWAY COMPANY,
APPELLANT,

vs.

RAILROAD COMMISSION OF THE STATE OF CALI-
FORNIA, FRANCK R. HAVENNER, C. C. BAKER,
ET AL., ETC.

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[fols. 2-3] **IN THE SUPREME COURT OF CALIFORNIA**

MARKET STREET RAILWAY COMPANY, Petitioner,

vs.

**RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and
Franck R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachse and Frank W. Clark, the members of
and constituting The Railroad Commission of the State
of California, Respondents**

**PETITION FOR WRIT OF REVIEW AND FOR STAY PENDING
REVIEW—Filed January 20, 1944**

To the Honorable Phil S. Gibson, Chief Justice, and to the
Honorable Associate Justices of the Supreme Court of
the State of California:

Comes now the petitioner above named and presents
its petition for a writ of review and for a stay pending
review, and respectfully shows as follows:

[fol. 4]

I

The petitioner, Market Street Railway Company, is a
corporation lawfully engaged in rendering a public utility
passenger transportation service by means of electric
streetcars, cable cars, electric trolley coaches, and self-
propelled motor coaches mainly within the City and
County of San Francisco and in minor part within the
County of San Mateo. Petitioner is a public utility sub-
ject to the provisions of the Public Utilities Act of the
State of California, the service conducted by it being
that of a "street railroad corporation" as that term is
defined in section 2 (h) of said Act.

II

The respondent, Railroad Commission of the State of
California, created and existing by virtue of Article XII,
section 22, of the Constitution of the State of California,
is the body empowered to administer the provisions of
said Public Utility Act, and respondents Franck R. Hav-

enner, C. C. Baker, Justus F. Craemer, Richard Sachse and Frank W. Clark are the duly appointed, qualified and acting members of and constituting said Railroad Commission.

III

On the 21st day of April, 1943, the Railroad Commission made and entered an order declaring that an investigation was thereby instituted upon its own motion for the purpose of inquiring into the reasonableness of the rates, charges, classifications, rules and regulations, and also [fol. 5] into the reasonableness, sufficiency and adequacy of the operations, service and facilities of Market Street Railway Company, the petitioner herein, and that a hearing would be held in said investigation, designated as Case No. 4680, on the 10th day of May, 1943. A copy of said order of the Railroad Commission instituting said investigation is attached hereto as "Exhibit A" (Appendix, p. 1), and made a part of this petition.

IV

In response to said order instituting the investigation, petitioner, through its counsel and officers, appeared before the Railroad Commission, on the 10th day of May, 1943, and again at adjourned hearings held on the 15th day of July and the 15th day of September, 1943. At the close of the hearing on the 15th day of September, 1943, Commissioner Havenner, then presiding, stated that the matter would be taken under submission.

V

On the 30th day of November, 1943, the Railroad Commission made and entered its decision in said proceeding, being Decision No. 36739, and in said decision incorporated an order which was to become effective on the twentieth day after the issuance thereof, namely, the 20th day of December, 1943, and by said order directed Market Street Railway Company to file and make effective on one day's notice a tariff schedule providing for a reduction of its cash or token fare from the existing rate of 7 cents per passenger to 6 cents per passenger for transportation [fol. 6] within the City and County of San Francisco. A copy of said Decision No. 36739, including the said order

incorporated therein, together with the separate opinion signed by Commissioner Sachse and the separate opinion signed by Commissioners Baker and Craemer, is attached hereto as "Exhibit B" (Appendix p. 3), and made a part hereof.

VI

On the 9th day of December, 1943, petitioner filed with the Railroad Commission a petition praying for a rehearing of said Decision No. 36739, said petition for rehearing being filed more than ten days before the effective date of the order contained in said decision reducing petitioner's rates, and in said petition for rehearing the petitioner stated the reasons wherein said decision is erroneous and unlawful. A copy of said petition for rehearing is attached hereto as "Exhibit C" (Appendix, p. 62), and made a part hereof. On the 15th day of December, 1943, the Railroad Commission ordered that an oral argument be had on said petition for rehearing on the 21st day of December, 1943, and further ordered that the effective date of said Decision No. 36739 be extended until a further order should be made with respect thereto. A copy of said order of December 15th extending the effective date is attached hereto as "Exhibit D" (Appendix, p. 76), and made a part hereof.

VII

On the 12th day of January, 1944, the Railroad Commission made and entered an order in said proceeding, in [fol. 7] which order the petitioner's request for a rehearing of said Decision No. 36,739 was denied; and it was ordered that said decision should become effective on the 11th day of February, 1944. A copy of the opinion of the Commission containing said order denying a rehearing is filed herewith as "Exhibit G" (Appendix, p. 87), and made a part hereof.

VIII

Petitioner is presenting this verified petition to the court for the issuance of a writ of review in compliance with the provisions contained in sections 67, 68 and 69 of the Public Utilities Act. It being herein alleged and shown that said Decision No. 36739, made by the Railroad Commission, and the said order therein contained, violate rights guaranteed the petitioner under the Con-

stitution of the United States, it is the duty of the Court, as provided in section 67 of the said Act, to exercise an independent judgment on the law and the facts. Petitioner is presenting and incorporating herein a further petition that the Court make an order staying or suspending the effect of said decision and order directing petitioner to reduce its rates; and petitioner alleges that if a prompt and full stay of the Railroad Commission's action be not ordered by this Court, as authorized by section 68 of the Public Utilities Act, your petitioner will be denied in any court of the State of California that judicial review to which it is entitled under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

{fol. 8]

IX

In issuing said Decision No. 36739, the Railroad Commission has not regularly pursued its authority, and has denied petitioner due process of law contrary to the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, in that the Railroad Commission has ordered petitioner to reduce its rates or fares (1) without first giving petitioner notice that it was being charged with the maintenance of rates that were unreasonable or in any other respect unlawful because in violation of the provisions of the public Utilities Act, (2) without declaring or framing the issue of unreasonable rates during the course of the hearing had in said proceeding, and (3) without according petitioner a hearing upon such issue. In this regard petitioner alleges and shows as follows:

(1) After the Railroad Commission issued its order of April 21, 1943, instituting the investigation, it did not thereafter, before rendering said Decision No. 36739, serve upon petitioner any writing in the nature of a complaint, or an order to show cause why specific action should not be taken, or proposed findings, or any writing indicating to petitioner that the reasonableness of its rates was in issue, or that evidence would be or should be introduced upon that issue.

(2) At no time during the course of said hearing had on May 10, July 15, and September 15, 1943, was a statement made by any Commissioner which could be taken

as raising the question of unreasonable rates as an issue [fol. 9] in said proceeding. The statements made by the Commissioners during the course of the hearings to indicate the purpose and scope of the proceeding were to the effect only that the Commission hoped to obtain an improvement in the existing transportation service. Those portions of the transcript are quoted in "Exhibit E" (Appendix, p. 78), attached hereto and made a part hereof.

(3) At no time during the course of said hearings did any witness for the commission, or any other witness, introduce evidence of the unreasonableness of the 7-cent fare presently charged by petitioner, nor any evidence of the reasonableness of any fare other than a fare of 7 cents if such other fare were to be applied. The only parts of the record that could have served even as an intimation to petitioner that any Commissioner or any witness might have entertained the view that the fare being charged by petitioner is unreasonable is found in certain questions asked by Commissioners Havenner and Sachse of Mr. Hunter, the Commission's chief transportation engineer, with respect to the relationship between rates charged and the quality of service rendered. Those portions of the transcript of hearing on September 15th are quoted in "Exhibit F" (Appendix, p. 82), attached hereto and made a part hereof.

(4) Petitioner did not introduce any evidence relative to the reasonableness of its existing rates, it not knowing or having any reason to believe that it was called upon to defend against the charge that its rates were unreasonable. [fol. 10] At no time did any Commissioner request petitioner to present such evidence or in any way direct its attention to the fact that it had not done so.

X

In issuing said Decision No. 36739 the Railroad Commission has not regularly pursued its authority, and has denied petitioner due process of law in violation of its rights under the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, and has acted arbitrarily and capriciously, in that it has made an order reducing petitioner's rates without having substantial or any evidence before it that the rates now charged are in any respect unreasonable or that a

lower rate would be reasonable for the future. In this regard petitioner alleges and shows:

(1) In so far as the Commission may have premised its order reducing rates upon the theory that a rate should be no greater than the value of the service rendered, it has acted without substantial or any evidence by which the value or worth of the transportation service being rendered by petitioner can be measured. No finding was made that the service being rendered is not worth the rate or fare presently charged. The only evidence in any way relating to the value of the service was that showing the quality of service rendered today is inferior to the service given in prewar times.

The statement made in said decision that there is evidence of long-time neglect, indifference and mismanagement [fol. 11] upon the part of petitioner is not supported by any substantial evidence and is contrary to the evidence. Mr. Hunter testified that nowhere are standards of operation up to normal today; that the decreased efficiency in the petitioner's service is attributable largely to the shortage of manpower; that its employees are working long hours; that cars are lying idle because men cannot be had to operate them; that perhaps its car dispatchers are doing the best they can to operate cars on schedule; that he could not suggest wherein petitioner could do anything more than it is doing to obtain additional employees. Mr. Jenkins, a former transportation engineer for the Commission and now an officer in the United States Navy, testified that the service being rendered upon those lines serving war production plants in which the Navy is interested is entirely satisfactory, and that he confers with petitioner almost daily and has received its full cooperation. Mr. Kahn, the president of petitioner, testified that all directives issued by the Office of Defense Transportation were being complied with; that wage increases cannot be accorded employees except with the approval of the War Labor Board, and that action had not yet been taken by that Board on pending wage-increase applications. The statement contained in the decision that 'the excuse of manpower shortage is not convincing,' is in conflict with all the evidence adduced.

The Commission did not make any finding and did not make any order as to what petitioner should do to improve its existing service, although it is empowered by the Pub-

[fol. 12] lie Utilities Act to prescribe service duties. Therefore, its order directing a reduction in rates upon the theory that the service rendered by petitioner falls short of some standard neither prescribed nor defined constitutes arbitrary and capricious action and is a denial of due process of law.

(2) In so far as the Commission's order reducing rates may have been premised upon the theory that it could now correct a supposed error of judgment made by the Commission in 1937 and 1938 when petitioner was authorized to increase the 5-cent fare theretofore in effect, it has acted in excess of its authority and without evidence. The intimation contained in the decision that petitioner would have been better off financially had its fare never been increased above 5 cents is not supported by any substantial evidence. Mr. Kahn expressed the opinion that those rate increases kept the company out of bankruptcy. If the Commission has concluded that petitioner would be better off under a 5-cent fare today, a sufficient answer is found in the Commission's own conclusion that had a 5-cent fare been in effect during the current year, petitioner would suffer an operating deficit of \$1,153,000.

(3) In so far as the Commission may have ordered a reduction in the 7-cent fare now applied upon the theory that such fare yields to petitioner a net return in excess of what is a reasonable rate of return upon the fair value of the property employed in rendering service, it has acted without substantial or any evidence, and, without making [fol. 13] any findings upon facts essential to the conclusion that existing rates are unreasonable and that other rates will be reasonable for the future. It has failed to make the finding required by section 32(a) of the Public Utilities Act that petitioner's existing rates are unjust and unreasonable.

There was evidence before the Commission showing the financial results of operations in past years and up to and including the month of March, 1943. It was stipulated at the hearing held on May 10, 1943, that certain monthly reports filed up to that time might be considered. No evidence was presented to indicate the probable results for the year 1943, or for a further period in the future. The Commission's decision shows that it has made its own

assumptions as to what revenues and expenses will be for the full year 1943. In addition, the Commission purports to reach conclusions as to what the results might be under a 5-cent fare and a 6-cent fare. There was no evidence in the record relative to the effect of a rate reduction in any amount, either for the current year or a future year. There was no evidence before it relating to those facts essential to any conclusion as to what would constitute a fair rate of return, nor any substantial evidence as to the value of the property upon which a fair rate of return should be accorded.

XI

In issuing said Decision No. 36,739 and the order therein contained the Railroad Commission has not regularly pursued its authority, has denied the petitioner due process of [fol. 14] law, has taken its property and the use thereof without compensation, in violation of its rights under the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, and has acted arbitrarily and capriciously in that the order requiring petitioner to reduce its fare from 7 cents to 6 cents per passenger is not supported by the evidence, is contrary to the evidence, and will result in a reduction of petitioner's gross operating revenue to the point where it will have no net income at all, but will suffer a substantial deficit. In this regard petitioner alleges and shows as follows:

(1) The Commission has erred in assuming that it might lawfully proceed to determine the reasonableness of the petitioner's rates, and to fix rates for the future, by purporting to measure the worth of the service being rendered. Such a rate-fixing theory is without support in any authoritative decision by court or regulatory commission.

(2) The Commission has acted arbitrarily and unlawfully in declaring that it might "accept" a figure of \$7,950,000 as representing the value of petitioner's property for rate-fixing purposes. The Commission obtains that figure from an exhibit introduced through a witness for the City of San Francisco, the exhibit being a copy of a resolution passed by the Board of Directors of petitioner approving the action of its President, Mr. Kahn, in negotiating the

sale of and agreeing to sell its operative properties to the City of San Francisco at that price. The witness did not state the purpose for which the exhibit was introduced. No witness expressed the opinion that the sum of \$7,950,- [fol. 15] 000, or any other sum, represented the fair value of petitioner's property for rate-making purposes, or presented evidence of the fair value of its property.

(3) The Commission's finding that "a 6-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate," is not supported by substantial or any evidence in the record, is contrary to the evidence, and the application of such a rate or fare would result in confiscation of petitioner's property.

The steps by which the Commission arrived at the conclusion that a 6-cent fare would yield to petitioner an adequate net return were as follows:

(a) The record contained data indicating the actual results for the year 1942 (Decision, "Exhibit B," Appendix, p. 34). The Commission refers to the return for that year as "abnormal," for it concedes that for a period of at least five years preceding, the net earnings of petitioner had not been sufficient to meet the interest and retirement obligations on its debts, and it knew that petitioner had not been able to pay a dividend for the past twenty years. Beginning, then, with a statement of the actual results for the year 1942, the Commission finds that the gross revenues were \$7,574,541; expenses \$6,504,627; and the net return \$1,069,914. But such expenses included only \$500,000 for depreciation expense, whereas the Commission seems to accept \$750,000 as reasonable, for its witness testified that the actual depreciation requirement is at least \$780,000. The corrected net return for the year 1942, therefore, was \$819,914.

[fol. 16] (b) The Commission next made assumptions, without evidence in the record, as to what the results might be for the full year 1943 with a 7-cent fare continued in effect. It concludes that gross revenues would be \$8,700,000; expenses \$7,940,000 and net return \$760,000, or a rate of return of 9.6 per cent on a purported rate base of \$7,950,000. Such a return is said to be "excessive." In the above allowance for expenses the Commission included \$590,000 for taxes, or \$165,000 more than the taxes paid in 1942, and

\$750,000 for depreciation. It also said that with inclusion of only \$500,000 for depreciation the net revenue would be \$1,010,000 (Decision, "Exhibit B," Appendix, p. 39).

(c) The Commission then proceeds to make assumptions, without any evidence in the record, as to what the petitioner's earnings might be for the year 1943 had a fare of 5 cents been in effect. It concludes that petitioner would suffer a deficit of \$1,153,000. Neither the gross revenue nor the operating expenses assumed are stated in the decision, but it is stated that depreciation expense of only \$500,000 was here included (Decision, "Exhibit B," Appendix p. 42).

(d) The Commission made further assumptions, there being no evidence in the record, of possible results were a 6-cent fare applied. It concluded that gross revenue would be \$8,500,000. For expenses it allowed \$8,000,000, including \$750,000 for depreciation. The resulting net return of \$500,000 was said to be a rate of return of 6 per cent upon the base figure of \$7,500,000 (Decision, "Exhibit B," Appendix p. 44). This return was found to be "more than adequate," and presumably constitutes the basis of its finding that a 6-cent fare will be reasonable henceforth.

What the Commission did is more clearly revealed when the figures reflected in its Opinion are set forth in tabular form.

Actual Results for 1942:	Revenues	Expenses	Net Return
1. With \$500,000 depreciation.....	\$7,574,541	\$6,504,627	\$1,069,914
2. With \$750,000 depreciation.....	7,574,541	6,754,627	819,914
Estimate for 1943—7¢ fare:			
1. With \$500,000 depreciation.....	8,700,000	7,690,000	1,010,000
2. With \$750,000 depreciation.....	8,700,000	7,940,000	760,000
Estimate for 1943—5¢ fare:			
1. With \$500,000 depreciation.....			*1,153,000
Below 7¢ fare.....			[2,163,000]
Estimate for 1943—6¢ fare:			
1. With \$500,000 depreciation.....	8,500,000	7,750,000	750,000
Below 7¢ fare.....	[200,000]		[260,000]
2. With \$750,000 depreciation.....	8,500,000	8,000,000	500,000
Below 7¢ fare.....	[200,000]		[260,000]

* Deficit.

The error in the Commission's assumptions is shown by its own calculations as set forth above. It said that with the application of a 5-cent fare petitioner would suffer a deficit of \$1,153,000, even when \$500,000 only is included for

depreciation expense. When this estimated deficit is compared with the net revenue of \$1,010,000 which the Commission expected with a continuation of the 7-cent fare, with [fol. 18] the same depreciation expense included, it is seen that the effect it gave to a 2-cent fare reduction was a decrease of \$2,163,000 in petitioner's net revenue, the sum of such profit and deficit. Yet, when the Commission assumed to estimate results with a fare reduction of 1 cent, it allowed for a decrease in net revenue of only \$260,000. The true decrease in net with the application of a 1-cent fare reduction would be at least half the \$2,163,000 decrease suffered with a 2-cent fare reduction, or at least \$1,081,500. This would leave petitioner with an annual deficit of \$71,500 (\$1,081,500 minus \$1,010,000), whereas the Commission's figures show that it has assumed a net return of \$750,000, with comparable depreciation expense included. As the Commission concedes that the proper depreciation expense allowance should be \$250,000 more, the actual deficit suffered, as revealed by the Commission's own figures, would be fully \$321,500. The only reasoning process by which the Commission could have arrived at the conclusion it did was to assume that some seventeen million more passengers would be induced to patronize petitioner's lines after the application of a 6-cent fare, and that all of that added revenue would be net revenue to petitioner; but there was not the slightest evidence in the record to that effect. Such an assumption is pure speculation.

XII

Petitioner alleges that the real effect of the Commission's rate order would be as follows:

A 1-cent reduction in the 7-cent fare presently charged for transportation between points within the City of San Francisco would affect approximately 95 per cent of petitioner's total gross operating revenue, and all of its gross revenues thus affected by the rate change would be reduced by one seventh.

Petitioner's estimate of the actual results of operation for the year 1943, the month of December alone being estimated because not all figures are yet available, is that its gross operating revenue will be \$8,549,010; expenses, including \$750,000 for depreciation but including nothing for federal income taxes, will be \$7,660,319; the resulting

net return will be \$888,691. Were a 1-cent fare reduction applied to such results expected for the year 1943, petitioner's gross revenue would be reduced by \$1,142,136, leaving a gross revenue of only \$7,406,874, or \$253,445 less than necessary to meet its actual expenses of operation. If such a fare reduction were to be made applicable for the succeeding year, petitioner would suffer a deficit of even larger amount. It is certain that the number of passengers carried upon its cars and busses would not be materially increased because of the lower fare charged, and the number of passengers carried cannot be increased unless manpower becomes available for the operation of equipment not now in use solely because of lack of operating personnel. If there should be greater patronage and an improvement in the manpower situation, the added expenses of operation would be largely offsetting, for the use of more equipment would result in increased costs for labor, power and maintenance. Petitioner believes that a substantial increase in wage scales will soon be allowed by the War Labor Board, with probable retroactive application from July 1, 1943. Petitioner believes and alleges that with the application of a 6-cent fare, as ordered by [fol. 20] the Commission, it would suffer an operating deficit of at least \$400,000 per year.

XIII

Petitioner alleges that the fair value of its property used and useful in rendering public transportation service is greatly in excess of \$7,950,000, the amount the Railroad Commission arbitrarily accepted as the rate-base upon which it purportedly allowed a rate of return of 6 per cent. Petitioner is entitled to and requires a rate of return in excess of 6 per cent upon the fair value of its property if it is to be placed in such an earning position as will enable it to refinance its funded debt soon falling due, and is to obtain additional capital funds necessary for the proper discharge of its public duties.

XIV

Petitioner alleges that unless this Court, before the 11th day of February, 1944, make an order staying or suspending said decision and order of the Railroad Com-

mission requiring petitioner to place in effect on that date a fare of 6 cents per passenger, and unless the court thereafter continues such stay or suspension until it render final judgment in this cause, petitioner will suffer great, immediate and irreparable damage in that petitioner will be denied the right to collect its lawful and necessary fare of 7 cents per passenger, and should this Court thereafter render judgment setting aside the decision and order of the Railroad Commission as unlawful and void, petitioner would have no reasonable means of recovering and could not recover from the patrons who would have paid such [fol. 21] reduced fare of 6 cents per passenger the additional 1 cent which should lawfully have been paid, and all of the revenue which the petitioner would have received had the full lawful fare of 7 cents been collected, amounting to fully \$3000 per day, would irretrievably be lost to it.

Petitioner offers to have ready and to file with the Court a suspending bond in such form and in such amount as may be approved by the Court, or to pay into Court or into a bank or trust company all sums of money it may collect in excess of a 6-cent fare, and keep such accounts and records, and file such verified reports, of the money collected from patrons in excess of said fare of 6 cents per passenger as the court may now and from time to time hereinafter require and direct.

Wherefore, petitioner prays that a writ of review be granted by this Court requiring the Railroad Commission to certify fully to this court the transcript of the records and proceedings of said Railroad Commission in that investigation instituted upon its own motion, designated as Case No. 4680, in which the Railroad Commission rendered its said Decision No. 36739 on the 30th day of November, 1943, and that the records in said proceeding be reviewed by this Court and judgment be entered setting aside said decision and order of the Railroad Commission.

Petitioner further prays that this Court grant a stay or suspension of said decision and order issued by the Railroad Commission pending the final determination of this cause upon the within petition for a writ of review, and promptly issue an order directing the Railroad Commission to appear at a hearing before this Court, after not less than 5 days' notice, and then and there show cause [fol. 22] why the said decision and order should not be

stayed and suspended until such time as this Court shall render final judgment in this proceeding on writ of review.

Dated, San Francisco, January 19, 1944.

Respectfully submitted, Cyril Appel, Pillsbury, Madison & Sutro, Attorneys for Petitioner.

Duly sworn to by Samuel Kahn; jurat omitted in printing.

[fols. 23-100]

Appendix

(Exhibits A, B, C, D, and G, attached to the Petition of Appellant to the Supreme Court of the State of California for Writ of Review, being, respectively, Order of Railroad Commission instituting investigation; Decision No. 36739 of Railroad Commission, with concurring opinions by Commissioners Sachse, Baker and Craemer; Petition of Market Street Railway Company for Rehearing; Order of Railroad Commission Extending Effective Date of Decision and granting oral argument on Petition for Rehearing; and Order of Railroad Commission of January 12, 1944, denying rehearing of Decision No. 36739, all omitted in printing, as they are duplicated elsewhere in this printed record.)

[fol. 101]

EXHIBIT E TO PETITION

Quotations from Transcript of Testimony

"Commissioner Havenner: Mr. Holm, would the City care to participate in any of the studies made by the Commission's engineers in this investigation?

Mr. Holm: Along what lines, Mr. Commissioner, please?

Commissioner Havenner: Well, of course, this investigation was undertaken with the hope that it might result in some improvement of the public transportation for the people of San Francisco and the investigation will be very broad in its scope and will go to almost every aspect of that question as it affects the operations of the Market Street Railway Company" (Tr. 42).

"Commissioner Clark: I would like to make this observation: It is my opinion as a Commissioner that in discussing

this matter the City of San Francisco administrative officers do it not only considering themselves operators of a competitive railroad, you might say, but also, in addition to that, entirely aside from that, as representing the public interest of the City of San Francisco to join with this body in trying to do everything possible to improve the service, whether that is operation of the two operations from the standpoint of a practical convenience to the public, or not, [fol. 102] or whatever it might be, I think that this Railroad Commission, at least, I am, as an individual Commissioner, interested in seeing ways and means carried through at the earliest possible date that will result in improving the system for operating and for the convenience of the average man and woman who is dependent upon this rail system at the present time to get to and from, particularly from war duties, and I think the City of San Francisco have an obligation to the public in addition to the position that it may occupy as operators of a competitive railroad" (Tr. 44).

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"Commissioner Sachse: I think the Commission would be interested, at least I would, Mr. Kahn, in what program, if any, the Railroad has of an improvement of service or putting this unused equipment into service, rehabilitation of those portions of the system that need rehabilitation, and particularly with reference to the deferred maintenance that seems to be in everybody's mind.

A statement or presentation from the Company of what the Company itself proposes to do, aside from anything that the Commission may want to recommend or order later on" (Tr. 45-46).

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"Commissioner Havenner: Now, with respect to the further hearing in this matter, what does the Company have to suggest with respect to a continuance at this time?

[fol. 103] Mr. Kahn: If the Commission please I am obliged to go away the latter part of this week and will be gone for 3 weeks. After I return why it will certainly take me at least a week to clean up my desk, perhaps longer because we have union negotiations staring us in the face at this time. Our contract with the union expires June 1st. It has already made demands upon the Company of

large proportions. How long that negotiation is going to take I cannot say, but if the Commission feels it can give us a 90-day continuance it would be not alone desirable, but highly appreciated.

Commissioner Havenner: Well, during the recess I discussed this matter with the other members of the Commission and I can state it was the consensus of opinion that we ought not to delay this matter, Mr. Kahn, unreasonably. The investigation was started, as I stated, in the hope that it might be productive of some improvement in transportation for the people here during this emergency period in particular, and I think it is the sense of the Commission that we ought to proceed as expeditiously as we can with our investigation. If the Engineers and other employees of the Company would be willing to cooperate in some of the studies that we are making we would be delighted to have them do so; if they can not—and I do not know whether they can or not, I do not know how you feel about that, if there is any matter here in which you feel that your staff could cooperate with us in just getting the essential facts that are necessary to conduct this hearing, why, we [fol. 104] will be glad to have them do so, but I think in any event our staff ought to proceed as rapidly as possible in order to make a thorough investigation here and perhaps make progress reports to the Commission. It may be impossible at this time to determine just how rapidly those progress reports can be made. But I hardly think that the Commission would feel disposed to grant a 90-day continuance at this time, and perhaps the best thing to do would be to adjourn this hearing now to a date to be set and we would endeavor to give the Company due notice of that date when the Commission's staff is ready to present some additional evidence" (Tr. 51-52).

[fol. 105]

EXHIBIT F TO PETITION

Quotations from Transcript of Testimony

(By Mr. Hunter):

"I next refer to the matter of the value of the service. Although this study and investigation does not analyze the rate situation I do not think we can not entirely close

our eyes to the value of the service. Obviously, they should be in balance as near as can be at all times and with the service getting worse, I will say, on the Market Street, or at a low stage there is no question but what the passengers are getting less for their money today than they were when they got better transportation. But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service. If you desire to go from the station to your office up town, 3rd and Townsend, say, the public is willing to stand, but they would like an opportunity to get any kind of service. But, nevertheless, they are getting less for their money, much less than in normal times, and I think we have to think of that.

In connection with the service study now, that leads me up to this next recommendation.

(By Commissioner Sachse):

Q. Wait a minute, if I may interrupt you there. I would like to get your view a little clearer on that No. 6. As I recall it you used the phrase or the language that we should not and could not entirely close our eyes to the value of the service. Wouldn't you rather say that we should not keep our eyes open to the value of the service? [fol. 106] A. I think your observation is very well taken.

Q. Now, let us look at the value of the service. Let us see what we mean by that—what you mean by it. Let us assume that Market Street had done everything possible that it could do, that nothing could be done to improve the service. Let us assume that, I do not think that is the fact, but I want to assume it. And that the public simply had to be satisfied with that poor service, as you say it is, much poorer than it was in better days. Do you think, then, that the public should, nevertheless, pay the same price for poor service as they formerly paid for good service, regardless of whose fault it is, whether—regardless of whose fault it is, if it is anybody's fault, that poor service is there.

A. The answer to my mind is that they should not.

Q. Now, when you look at Exhibit No. 10, Mr. Mors' exhibit, would you say that the service that was rendered by the Market Street Railway in the years 1937 and 1938, with a 5 cent fare, was superior to the value of the service

now from the standpoint of the car rider, of course, that they now receive under the 7 cent fare?

A. Oh, the earlier service was superior" (Tr. 156-157).

"Commissioner Sachse: On the question of service, Mr. Hunter, in your opinion, is the service now rendered by Market Street Railway in San Francisco or worse or approximately the same quality and character of service as it was during the 5 cent fare era prior to the war emergency?

[fol. 107] A. I think the service is worse now.

Q. In your opinion should the cost of the service that the public is to pay, must pay, have some relation to the quality of service that is rendered, in so far as the public is helpless, beyond its control to get better service for the same amount of money that they pay?

A. Yes, that is covered in my recommendation No. 6.

Q. Will you enlarge a little bit on that? That No. 6 reads as follows: 'The value of the service should be in keeping with the rates.'

And I would like to have you keep in mind my thought on that so that you can give your answer with that in mind. Assuming that it is beyond the control—the Company to give as good service as it did some time ago do you think that, even under those circumstances, the public should pay the same or more than they formerly paid for a superior quality of goods or service, other things being equal?

A. I think the service should go along with the rates.

Commissioner Havenner: Do you mean by that when the standard of service decreases rates should be commensurately decreased, if that can be calculated?

A. Of course, the service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one. But, obviously, as the service declines that should be recognized in establishing any rate, but to determine just what a rate should be on a particular service, you could not do it without considering all the other elements that go in. There are many.

[fol. 108] Commissioner Sachse: That is all I have.

Mr. Appel: May I ask another question—do you have a question, Commissioner Baker?

Commissioner Baker: Yes.

Q. Mr. Hunter, you testified, if I understand, that the service of the Market Street Railway Company, in your opinion, is worse than it was when they operated on the 5-cent fare basis?

A. That is correct.

Q. Do you attribute the difference in the service, that is, the decreased efficiency of service to the fact that there was a change from a 5-cent fare to a 7-cent fare?

A. No, I attribute it to the manpower shortage.

Q. In other words, no causal relationship between the present quality of the service and the fact that the Company went from a 5-cent basis to a 7-cent, no causal relationship?

A. There might be a somewhat related factor in the headways. As the fare is increased—the fare was increased the headways, I think, were lengthened out a little so it would have that effect. But, as far as the riding capacity of the cars offered, I do not remember that to be any worse after the 7 cents than with the 5.

Commissioner Sachse: On that point, Mr. Beck, this record shows, doesn't it, Mr. Hunter, that immediately after the increase in the fare business dropped off to a very considerable extent and that the service then was adjusted by the Company with the requirements in accordance with the requirements of the reduced traffic?

A. Yes, that is my memory.

[fols. 109-141] Mr. Beck: I believe you asked the question I was going to ask. In other words, value of service, as I understand you, is based on headway, is that it?

A. Headway is one thing that goes to make service, capacity, availability of the seats, type of equipment. There are other things that go in with service.

Commissioner Sachse: One other question. Now, was service in any other respects improved by reason of the 7-cent fare taking effect? Was there better equipment or any improvement in the service instituted after the increase in fare?

A. Not in the way of equipment except I might say I do not know how the bus facilities entered in at that time. I do not understand it was because of the fare change they got more buses. To consider the whole picture there

you would have to trace through and see whether they did get new buses at that time. I do not remember that they did, but of street cars, no.

Mr. Beck: If the value of service under the 5-cent fare was greater than it is now is it your opinion that the fare now should be below 5 cents?

A. I think, Mr. Beck, in figuring fares you will have to consider all of the elements. I could not answer that question, I would not say that because the service was poorer now than when they had the 5 cents the present fare should be less than 5 cents. There might be many other elements to consider.

Q. In other words, value of service is a very hard thing to evaluate?

A. That is correct" (Tr. 193-196).

[fol. 142] Due service and receipt of a copy of the within is hereby admitted this 20th day of January, 1944.

Roderick B. Cassidy, Ass't Chief Counsel Railroad Commission.

[fols. 143-145] [File endorsement omitted.]

[fol. 146] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ANSWER OF RAILROAD COMMISSION TO PETITION FOR WRIT OF REVIEW—Filed February 9, 1944

The Railroad Commission respectfully submits its answer, as permitted by Rules of Court, to the petition of Market Street Railway Company for review of an order reducing petitioner's street railway fare in San Francisco.

The challenged order was issued in an investigation proceeding initiated by the Commission and inquiring into [fol. 147] the reasonableness of petitioner's rates and the adequacy of petitioner's service. (Appendix to Petition, p. 1.) Hearings were had before the Commission en banc, and evidence was introduced by the Commission's staff, by petitioner, and by the City of San Francisco.

Two decisions were issued in the investigation proceeding. The Commission's first opinion and order therein

was issued on November 30, 1943. (Decision No. 36739; Appendix to Petition, p. 3.) In that decision the Commission found that the existing seven-cent fare produced an excessive return, and that a six-cent fare is a just, fair and reasonable rate. Petitioner was directed to file a tariff changing its fare from seven cents to six cents.

After hearing oral argument on a petition for rehearing, the Commission issued its second opinion and order, and denied rehearing. (Decision No. 36821; Appendix to Petition, p. 87.) The effective date of the rate reduction order has been extended to February 29, 1944.¹

Asserted grounds for review

Petitioner alleges that the Commission's action was unlawful. Its four major grounds of attack, as set forth on pages 6 to 18 of the petition, briefly summarized, are as follows:

That a rate reduction was ordered without giving petitioner notice, before or during the hearings, that the reasonableness of its rates was in issue, and without according [fol. 148] petitioner a hearing upon that issue. (Petition, p. 6.) In its argument (Petition, p. 23) petitioner asserts that the issue of rate reasonableness was not framed during the hearings by the introduction of evidence directed concretely to that issue.

That the fair value of petitioner's property is in excess of \$7,950,000 (Petition, p. 18), the figure used by the Commission as an appropriate rate base for testing the reasonableness of petitioner's return and rates. In this respect petitioner asserts that there was no substantial evidence before the Commission as to the value of petitioner's property (Petition, p. 11), and that no witness presented evidence of the fair value thereof. (Petition, pp. 12-13.)

That in so far as the Commission may have based its order upon the premise that rates should be no greater than the value of the service rendered, it has acted without any evidence by which the value or worth of petitioner's service can be measured. (Petition, p. 8.)

That the real effect of the Commission's order will be a reduction of petitioner's gross operating revenue to the

¹ On February 3, 1944, the Commission extended the effective date of Decision No. 36739 to February 29, 1944.

point where petitioner will have no net income, but will suffer a substantial deficit. (Petition, pp. 12, 16.)

Other claims advanced by the petitioner, relating to the contentions summarized above, will be discussed in succeeding sections of this answer and brief.

Answer to petitioner's contentions

The Commission is compelled to make denial of certain allegations contained in the petition, and to point out that [fol. 149] the alleged facts necessarily are subject to explanation. A preliminary statement here, subject to further amplification later in this answer, will serve to define the principal issues.

On the question of procedural due process it is the position of the Commission, for reasons hereinafter discussed, that petitioner had ample notice and was accorded a hearing upon the issue of the reasonableness of petitioner's rates. In this connection reference should be made here to the Commission's opinion denying rehearing. (Appendix to Petition, p. 87, particularly pp. 89-99.)

As the Commission views it, the record does contain substantial evidence respecting the value of petitioner's properties, and that record amply justifies use of the \$7,950,000 rate base figure as a test of the reasonableness of petitioner's rates and the return produced by such rates. In any event, the ultimate question is whether the rates fixed result in confiscation.

On the question raised by petitioner concerning the Commission's consideration of value of service as a test of rate reasonableness, the Commission must deny that its application of such test was without evidence by which to measure the worth or quality or character of petitioner's service.

The Commission must also take issue with the petitioner on the latter's assertion that the order reducing rates will remove all net income and cause petitioner to suffer a deficit. In the investigation proceeding the Commission concluded that at a six-cent fare, under reasonably adequate [fol. 150] quate service and with the operation of adequate available equipment, a net operating income would be realized in an amount approximately \$500,000 for a twelve-month period. Such amount corresponds to a return of about six per cent on a base figure of \$7,950,000.

Argument

Petitioner had ample notice and was accorded a hearing upon the issue of the reasonableness of petitioner's rates.

The Commission's action, so petitioner asserts, operates as a denial of procedural due process of law, and is therefore repugnant to the California Constitution and the Fourteenth Amendment to the Federal Constitution. The basis of this contention is that the Commission ordered a reduction in rates without giving petitioner notice that it was charged with maintaining rates assertedly unreasonable or otherwise unlawful under the Public Utilities Act, without formulating any issue during the course of the hearings regarding the unreasonableness of such rates, and without according petitioner a hearing upon that issue. More specifically, petitioner asserts that following the initiation of the proceeding and before issuance of the decision therein, the Commission failed to serve upon petitioner any complaint, order to show cause, or proposed findings indicating that the reasonableness of petitioner's rates was in issue, or that evidence upon that issue would or should be introduced; that during the course of the hearings no statement was made by any Commissioner [fol.151] that could be considered as raising the question of unreasonable rates as an issue in the proceeding; that during the hearings no witness introduced evidence concerning the unreasonableness of petitioner's current fare of seven cents, nor evidence of the reasonableness of any other fare; and that petitioner introduced no evidence relating to the reasonableness of its existing fares since it did not know and had no reason to believe that it would be required to meet the charge that its rates were unreasonable.

The Commission submits that the above contentions are not supported by the record. That the reasonableness of petitioner's rates was in issue from the very inception of the proceeding appears from the order instituting investigation, from the statement of the presiding Commissioner at the opening of the hearings, and from the nature of the evidence presented by the Commission's staff, by petitioner, and by the City of San Francisco. The Commission's order of April 21, 1943 (Appendix to Petition, p. 1) instituted an investigation

• • • • • into the reasonableness of the rates, charges, classifications, rules and regulations of the

Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company; * * *"

When the matter was called for hearing before the Commission sitting en banc, all members being present, the Commission's President thus announced the scope of the hearing:

[fol. 152] "The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the reasonableness of the rates and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company." (Tr., p. 2.)

Thereafter, the question of the reasonableness of rates was adequately and comprehensively explored by witnesses called by the Commission, the petitioner and the City. The character of the evidence presented by these witnesses is indicated in the Commission's opinion on petition for rehearing. (Appendix to Petition, p. 87, particularly pp. 89-99.) A brief summary of the nature of such evidence will suffice to show that the reasonableness of petitioner's fares was in fact an issue before the Commission. The testimony of J. G. Hunter, Assistant Director and Chief Engineer of the Commission's Transportation Department, covered many matters that may properly be ascribed to the reasonableness of petitioner's rates. He testified that the staff, in preparing its studies, among other things considered reports regularly submitted by petitioner and relating to its financial condition and results of operation. During his testimony data were submitted relating to operating revenues and expenses, taxes, depreciation, and operating results following the establishment of the existing seven-cent fare. Evidence was offered indicating the number of revenue passengers carried. The witness compared petitioner's fare with those in effect [fol. 153] elsewhere. His testimony also dealt with the relationship between fares and service. (Witness Hunter: Tr., pp. 4-14; 16-19; 193-196; 217-221.)

John F. Donovan, the Commission's Assistant Financial Expert, submitted an exhibit covering the financial results of petitioner's operations during the period 1938-1942, in-

clusive. That exhibit included a comparative balance sheet, an analysis of the profit and loss account, a comparative income statement, a statement of operating revenues, and a statement of operating expenses. Such information was obtained from petitioner's books. (Witness Donovan: Tr., pp. 15-16.)

The Commission's Transportation Research Engineer, Charles W. Mors, submitted a comprehensive study. His report covered the financial results of petitioner's operations, and contained a detailed discussion of petitioner's rates history during the twenty-one year period ending December 31, 1942. Among the subjects embraced in that report were operating revenues, operating expenses, taxes, depreciation practices, maintenance of equipment, and the effect of various fare increases authorized since 1937. Witness Mors' report indicated the trends of both operating revenues and expenses. It analyzed fare structures and considered the effect of fare changes on operating revenue. It also dealt with an historical cost appraisal of petitioner's properties, prepared by Commission engineers in 1920, and which had been brought forward by including net additions and betterments as reported by petitioner. (Witness Mors: Tr., pp. 67-71; 106-116.)

[fol. 154] Edward G. Cahill, Manager of Public Utilities of the City of San Francisco, testified that the Public Utilities Commission of that City favored a uniform five-cent fare, as well as universal transfers without additional charge between the Municipal and the Market Street lines. He also produced the offers submitted to the City by petitioner relating to the proposed sale of the latter's operative properties. (Witness Cahill: Tr., pp. 94-96; 102-105.)

Petitioner's President, Samuel Kahn, reviewed the company's rates, referred to the fare increases previously authorized by the Commission, and emphasized their effect upon petitioner's revenues. He described the loss of traffic by petitioner to the Municipal Railway following the establishment of the seven-cent fare. He testified concerning the income that would have been yielded by the five-cent fare had it remained in effect during the period 1937 to 1939. He also discussed such matters as revenue trends, taxes, and wages. Petitioner's counsel offered in evidence the Commission's decisions issued since 1937 and authorizing increases in fares. (Witness Kahn: Tr., pp. 236-241; 246-268; 290-293.)

Unquestionably, the evidence discussed above relates directly to the reasonableness of petitioner's rates, and by no means was referable solely to the adequacy of petitioner's service. For what purpose, it might well be asked, did the Commission's staff submit data concerning petitioner's rates if the *reasonableness* of those rates was not in issue? *Not once, throughout the three days of hearings [fol. 155] (over a four-month period) devoted to the taking of evidence, did petitioner object to the introduction and consideration of such evidence relating to the reasonableness of rates. On the contrary, petitioner voluntarily offered exhibits and testimony bearing upon that subject.* Thus it is clear that petitioner must have considered the proceeding as one which involved reasonableness of rates as well as adequacy of service. *Petitioner was confronted by and offered full opportunity to cross-examine witnesses whose testimony concerned rates and fares. It was afforded every opportunity to meet that testimony, and not once during the taking of the evidence did petitioner claim that the matter of rates was not involved, or that the evidence had taken petitioner by surprise. Clearly, this contention of petitioner is wholly without merit.*

The authorities cited by petitioner (Petition, p. 23) do not establish its contention that the Commission's decision was violative of procedural due process. In *West Ohio Gas Company v. Public Utilities Commission*, 294 U. S. 63, the Ohio Commission, by an ex parte order entered following submission of the case and without the knowledge of the utility, directed that certain reports be deemed part of the record. In its decision subsequently rendered the Commission used the information shown in those reports to justify a conclusion not consistent with certain facts conceded at the hearing. Obviously, the utility had no opportunity to explain such reports. Again, in *Ohio Bell Telephone Company v. Public Utilities Commission*, 301 U. S. 292, the Commission, in rendering its decision, relied [fol. 156] upon data and statistics not included within the record presented at the hearing. Indeed, the sources of such information were never revealed to the parties nor to the reviewing courts. In fact, a demand by the company to inspect this evidence was refused by the Commission. An order resting upon information which was held not to have been within the judicial knowledge of the Commission, obviously could not stand.

In *Morgan v. United States*, 304 U. S. 1, the Court was concerned primarily with the method by which the officer charged with the responsibility of determining the issues (the Secretary of Agriculture) had arrived at his decision. It was held that the procedure there followed had not accorded to respondents the fair hearing to which they were entitled. It was pointed out, however, that although no specific complaint concerning the unreasonableness of the rates involved ever had been formulated, the proceeding having been commenced by the Secretary on his own initiative, none was required.

The legal sufficiency of the procedure adopted by the Commission in the instant proceeding has met with judicial approval. In a proceeding initiated by a notice substantially similar in form to that involved in the present proceeding, where the utility affected participated in the hearing but made no request for any specific findings, it was held that the requirements of procedural due process had been satisfied. (*American Toll Bridge Company v. Railroad Commission of California*, 307 U. S. 486.) In the [fol. 157] *American Toll Bridge* case the Court stated in part as follows:

"The commission initiated the proceeding, entitled 'In the matter of the investigation upon the commission's own motion, into the rates, charges, contracts, classification, rules and regulations of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano;' gave appellant notice that the investigation would extend to tolls for use of that bridge; * * * " (307 U. S. 486, 492.)

We refer also to the following authorities, which support the above conclusion:

Nat'l. Labor R. Board v. Mackay Radio & Tel. Co.,
304 U. S. 333, 349;

Railroad Commission of California v. P. G. & E. Co.,
302 U. S. 388, 392, 393;

Northwestern Bell Tel. Co. v. Nebraska State Ry. Co.,
297 U. S. 471, 476, 477;

People ex rel. N. Y. & Queens Gas Co. v. McCall, 245
U. S. 345, 348, 349;

Asbury Truck Co. v. Railroad Commission of California, 52 F. (2d) 263; (Affirmed per curiam, 287 U. S. 570.)

In the latter case the Court said, at page 268:

"To meet the requirements of due process of law, an administrative body, such as the defendant commission, need not follow any particular form of procedure. While it is essential that before one's rights are determined a hearing of some kind must have been [fol. 158] accorded, it is sufficient if the party affected is apprised of the nature of the hearing and is afforded the opportunity to offer evidence and to examine that of the opposition."

The Commission's decision, it is submitted, fulfilled in all respects the requisites of procedural due process.

There was nothing arbitrary or unlawful in the Commission's use of \$7,950,000 as a rate base.

Petitioner asserts that there is no substantial evidence in the record concerning the value of petitioner's property, and says that the Commission arbitrarily accepted a rate base figure which does not represent fair value.

The Commission used \$7,950,000 as an appropriate rate base for testing the reasonableness of petitioner's return and rates. That figure is the amount for which petitioner twice offered to sell its operative properties to the City of San Francisco, first in September of 1942 and again in March of 1943, one month before the Commission instituted its rate investigation. The figure in question was arrived at as the result of negotiations extending over a period of some two years. (Appendix to Petition, pp. 39, 109.)

In rate proceedings regulatory agencies are generally faced with the problem of the method or means by which to arrive at a judgment of the fair value of utility properties. In such cases it is necessary for the agency to adopt some rate base figure in order to test the reasonableness of rates. The difficulty lies in the ascertainment of the proper rate base under the circumstances present in particular cases. But neither the Legislature nor the Courts have restricted the Commission to the use

of any particular formulae. In performing the legislative function of rate making utility commissions have been left free, "within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances." (*Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575, 586. See also *Knoxville v. Knoxville Water Company*, 212 U. S. 1; *San Joaquin L. & P. Corp. v. Railroad Commission*, 175 Cal. 74, 76.)

In so far as utility properties are concerned, "the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available." (*L. A. Gas & E. Corp. v. Railroad Commission*, 289 U. S. 287, 305.) Utility property is not ordinarily the subject of barter and sale. But in this proceeding the Commission had before it petitioner's twice-repeated offer to dispose of its properties for \$7,950,000, and used that amount as an appropriate rate base in the light of the record before it. The Commission considered that these offers to sell, made by petitioner in good faith, represented petitioner's own judgment of the market or exchange value of petitioner's properties.

The formulae used in arriving at "fair value" of the operative properties of a utility are *but a substitute used in default of the existence of market value*. As pointed [fol. 160] out by Oscar L. Pond in his exhaustive work, *Public Utilities*, Volume II, present value is the true test. Mr. Pond states (p. 1120):

"While all accurate available evidence of the original cost, as well as the cost of reproduction is desirable and helpful in determining the extent of the actual investment necessary to render the service in any particular case, neither these nor the amount of capitalization are conclusive. *The actual present market value of the plant or its worth as a going concern is the ultimate practical basis for determining the value of the investment upon which to fix a rate which will produce a fair return.*" (Emphasis supplied.)

Thus, if market value were ascertainable, no need would exist for the judicial formulae for ascertaining fair value. "Market value" would be "fair value" and the application of the several judicially defined standards would be

come unnecessary. When the reason for the rule ceases, so does the rule. That is the exact situation in the instant case. The owner of these properties twice stated publicly that it would sell the same for \$7,950,000 and twice offered to sell such properties to the people of San Francisco for that price. Surely that price represented the market value of these properties. The existence of a market for a commodity depends upon the nature and circumstances of the commodity offered for sale or sold. An owner is competent to testify as to the value of his property and his testimony as to value should be binding upon him. [fol. 161] The Commission does not believe that petitioner should now be permitted to impeach its own considered judgment and representation as to the fair value of its properties.

The record contains much other evidence bearing upon the question of value. For example, petitioner's tracks were shown to be in poor condition, due in part to the existence of much deferred maintenance over a period of years. (Appendix to Petition, p. 16.) There has been a marked and continuous reduction in operating expenditures for ways and structures extending over a fifteen-year period. (Appendix to Petition, pp. 16-17.) Petitioner's streetcar rolling stock is obsolete, many of its cars are out of service, and there is considerable deferred maintenance on streetcars in active service. (Appendix to Petition, pp. 19-20.)

In light of the above circumstances, a book cost figure indicating a depreciated investment in road and equipment of more than five times the offer to sell bears no relation to the actual depreciated value of petitioner's operative property in its present condition. (See Commissioner Sachse's concurring opinion, Appendix to Petition, pp. 50-53.)

The mere fact that the Commission used the amount for which petitioner offered to sell its properties as a rate base or measure of values does not of itself establish that such exercise of judgment constitutes arbitrary or capricious action, unsupported by substantial evidence. In rate proceedings there is no "invariable method of computation", no "artificial rule or formula" which must [fol. 162] be followed. (*Clark's Ferry Bridge Co. v. Public Service Commission*, 291 U. S. 227, 240; *L. A. G. & E. Corp. v. Railroad Commission*, 289 U. S. 287, 305.)

The ultimate question is whether the rates fixed will result in confiscation. (*Railroad Commission v. Pacific Gas & Electric Co.*, 302 U. S. 388, 394.) This Court has indicated that the Commission might fix rates "without making a finding, in figures, of the value of the property, or of the rate of return which, in its judgment, should be realized," and has held that the Court's concern "is merely whether the rates fixed will deprive the utility of its property without due process of law." (*San Joaquin L. & P. Corp. v. Railroad Commission*, 175 Cal. 74, 77.)

As recently as January 3, 1944, in *Federal Power Commission v. Hope Natural Gas Co.*, — U. S. —, the Supreme Court, in sustaining the validity of an order reducing rates, stated in part as follows:

"When we sustained the constitutionality of the Natural Gas Act in the *Natural Gas Pipeline Co. Case*, we stated that the 'authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the States under the Fourteenth to regulate the prices of commodities in intrastate commerce.' 315 U. S. p. 582. *Rate-making is indeed but one species of price-fixing. Munn v. Illinois*, 94 U. S. 113, 134. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value [fol. 163] is reduced does not mean that the regulation is invalid. *Block v. Hirsh*, 256 U. S. 135, 155-157; *Nebbia v. New York*, 291 U. S. 502, 523-539 and cases cited. It does, however, indicate that 'fair value' is the end product of the process of rate-making, not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated." (Footnote 9 omitted.) (Emphasis supplied.)

"We held in *Federal Power Commission v. Natural Gas Pipeline Co.*, *supra*, that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of

'pragmatic adjustments.' *Id.*, p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. *Id.*, p. 586. Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. Cf. *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co. v. Commission* (No. 1), 294 U. S. 63, 70; *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). *It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. More-[fol. 164] over, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Cf. Railroad Commission v. Cumberland Tel. & T. Co.*, 212 U. S. 414; *Lindheimer v. Illinois Tel. Co.*, *supra*, pp. 164, 169; *Railroad Commission v. Pacific Gas & E. Co.*, 302 U. S. 388, 401." (Emphasis supplied.)

The Commission submits that it did not act arbitrarily or without substantial evidence in using the figure of \$7,950,000 as a rate base.

Petitioner alleges further that the Commission failed to make a finding that existing rates are unjust and unreasonable, and that such a finding is required by section 32(a) of the Public Utilities Act.² *The Commission did*

² Section 32(a) of the Public Utilities Act (Stats. 1915, p. 115, as amended; Deering's General Laws, Act 6386), reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications,

[fol. 165] find that the seven-cent fare "produces an excessive rate of return." (Appendix to Petition, p. 42.) It also found "that a six-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate, provided, however, that every possible and reasonable effort will promptly be made by the company to furnish an improved service." (Appendix to Petition, p. 44.) And the opinion on rehearing specifically declared that "the Commission finds that a rate in excess of six cents is unreasonable and excessive." (Appendix to Petition, p. 96.) In that same opinion the Commission stated as follows: "We have found that a 6-cent fare for Market Street Railway Company is just and reasonable and that any fare in excess of six cents is unjust and unreasonable." (Appendix to Petition, p. 119.)

These unambiguous findings clearly constitute a basic finding that the existing seven-cent fare is unjust and unreasonable, as contemplated by section 32(a) of the statute.

Consideration of service is essential in establishing reasonable rates. The Record supports the Commission's conclusions regarding the value or worth of petitioner's service.

In arriving at a determination of the question of rate reasonableness, the Commission did not limit itself to an

or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

[fol. 166] examination of such matters as rate base and return, but properly gave consideration to what has been termed the value or worth of petitioner's service. In so doing, the Commission follows the well established principle that rates must be reasonable to the rate paying public as well as to the utility or carrier involved.

But petitioner says that this service factor has been rejected as a basis for determination of the reasonableness of rates (Petition, p. 26); and that in so far as the order may be based upon the theory that rates should be no greater than the value of the service rendered, there is no evidence by which such value or worth can be measured. (Petition, p. 8.)

The Commission submits that there is an inseparable relationship between rates and service which may not be ignored in rate proceedings. This interdependence of the character and quality of utility service on the one hand and the level of rates on the other hand has long been recognized by courts and commissions, and a number of authorities are set forth in the commission's decision. (Appendix to Petition, pp. 26-33.)

Briefly stated, the Commission's position is that a rate fixing authority may not look solely to the position of the utility in establishing reasonable rates. A utility may be entitled to ask a fair return upon the value of that which it employs for the public convenience, but "what the public is entitled to demand is that no more be exacted from it . . . than the services rendered . . . [fol. 167] are reasonably worth." (*Smyth v. Ames*, 169 U. S. 465; 547.) The public "cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends." (*Covington etc. v. Sandford*, 164 U. S. 578, 596.)

The evidence relating to the character, quality and adequacy of petitioner's service is reviewed at some length in the Commission's decision. — (Appendix to Petition, pp. 9-33.) The record contains much testimony and many exhibits concerning such matters as petitioner's operating schedules, performance records, track and equipment maintenance conditions, the manpower and employment situation, status of operating supervision, condition of street-cars and buses, and petitioner's depreciation and renewal practices.

The Commission concluded, after making full allowance for wartime difficulties, that petitioner's service has grown progressively worse over a period of years; that in 1943 the standard of service reached the lowest point in the company's history; and that such service is poorer and less adequate than the competing Municipal service. (Appendix to Pétition, pp. 32; 43; 99-101.)

Petitioner generally alleges that there is no substantial evidence to support the Commission's findings that petitioner has been guilty of long time neglect, indifference and mismanagement in the operation of its properties. The Commission contends that the record contains substantial evidence from which the Commission was justified in drawing a permissible inference and conclusion [fol. 168] that fully supports the findings thus assailed. Said findings are presumed to be correct until it be shown that the record, in fact, contains no substantial evidence to support them, and this petitioner has not done in its petition for review. In *San Diego L. & T. Co. v. Jasper*, 189 U. S. 439, 441, Justice Holmes, speaking for the Court, stated in part as follows:

"In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we cannot say that it was impossible for a fair-minded board to come to the result which was reached."

In ascertaining a just and reasonable fare the Commission, mindful of its obligations to petitioner and to the public, not only determined that a six-cent fare would produce a reasonable return, but also that such fare would not be greater than the service is reasonably worth to petitioner's patrons. Certainly, in the fixing of rates the Commission must consider and give weight to evidence relating to the value of the service to the users thereof.

The Commission submits that its determination and findings in connection with the value or worth of petitioner's service are entirely in accord with the evidence of record and with the duty imposed upon the Commission to establish "just, reasonable or sufficient rates." (Public Utilities Act, sec. 32(a).)

[fol. 169] Petitioner has not sustained the burden of showing that the order under attack will produce confiscatory results.

Petitioner alleges that the Commission's finding to the effect that "a 6-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate," is not supported by substantial or any evidence, is contrary to the evidence, and that the application of such a fare would result in confiscation of petitioner's property. (Petition, pp. 13.) The petition purports to show the steps by which the Commission arrived at its conclusions, the "assumptions" made by the Commission, and the alleged errors in those assumptions. (Petition, pp. 13-16.) The petition further purports to show that instead of a twelve months' net operating income of approximately \$500,000 under a six-cent fare, corresponding to a return of about six per cent on the rate base (after payment of all operating expenses, depreciation and taxes), in 1943 petitioner would have received no return whatever, but would have experienced a \$253,445 operating deficit, and a greater deficit in the succeeding year. (Petition, p. 17.)

Similar contentions were advanced by the company in seeking rehearing before the Commission, except that in the petition now before the Court these matters are elaborated upon and a tabulation of figures is presented. (Petition, p. 15.) This tabulation is preceded by the allegation that "What the Commission did is more clearly revealed when the figures reflected in its Opinion are set forth in tabular form." The Commission contends that [fol. 170] the implication in the tabulation that the Commission found a five-cent fare would produce an annual deficit of \$1,153,000, is misleading and erroneous, does not correspond to the language of the Commission's decision, and is without support in the record. These matters were carefully reconsidered by the Commission in its opinion denying rehearing and the Commission's answer thereto is shown on pages 110 to 116 of the appendix to the petition herein, and particularly on pages 113 to 115.

In so far as the revelation of the steps is concerned, by which the Commission is said by petitioner to have arrived at the conclusion that six cents is a reasonable fare, it is the Commission's position that these alleged steps

misstate the plain language of the decision.³ The excerpts [fol. 171] from the Commission's decision set forth in the margin conclusively show, the Commission believes, the basis actually used in determining that a six-cent fare, under the circumstances reflected in the decision, is a just, fair and reasonable rate, *provided, however, that every possible and reasonable effort will promptly be made by the company to furnish and improve its service.* The quota- [fol. 172] tions in the margin also show by what mathematical process the Commission reached its conclusion that a

³ The Commission's decision, with reference to this matter, reads as follows (Appendix to Petition, p. 38 et seq.):

"Our Department of Finance and Accounts introduced evidence showing Comparative Balance Sheet, Profit and Loss Account, Comparative Income Statement, Operating Revenues and Operating Expenses for the five years 1938 to 1942, inclusive; all taken from the company's sworn annual reports filed with the Commission and from the company's records. Reference has heretofore been made to the earnings of the company during the past twenty years. The record is clear that prior to the war the five-cent fare produced a greater gross and net annual revenue than any fare in excess of five cents.

"What increase in traffic a five-cent fare would bring at the present time is not certain, but there is no doubt that it would be substantial particularly at the off-peak periods and also for the reason that a large number of lost short-haul riders would return to the company's lines. In the eight months' period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775, compared with \$4,737,856 for the same period in 1942, an increase of twenty per cent. On this basis the total for the full year of 1943 under a seven-cent fare may be expected to be about \$8,700,000. If operating expenses increased to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes, the net operating revenues would be \$760,000, which is a return of 9.6% on \$7,950,000 (footnote 19 omitted), the price at which the company offered to sell its properties to San Francisco in 1942 and again in 1943. If a deprecia-

net income of about \$500,000 would be earned by the company in the first twelve months' period under the six-cent fare.

The vice in petitioner's allegations, as the Commission sees it, is found in the fact that the company in its text and in its tabulation on page 15 of the petition *has completely ignored the certain increase of traffic that will [fol. 173] result from the charging of a lower fare.* (See emphasized quotations in the margin.) The effect of charging a lower fare than seven cents may reasonably be ex-

tion allowance is made of \$500,000, as set up by the company in previous years, the net operating revenues would be \$1,010,000, or a return of 12.7% on said \$7,950,000. Both of these rates are excessive and unjustified by the present service."

And further (Appendix to Petition, p. 42):

"The fixing of a five-cent fare on a twelve months' basis, *without any allowance whatever for increased traffic*, and including in operating expenses \$500,000 for depreciation, would result in a deficit of about \$1,153,000. *On the basis of the record the indications are that with a five-cent fare a 25% to 30% increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5% return on the \$7,950,000 base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area.*" (Emphasis supplied.)

Further (Appendix to Petition, p. 43):

"The two-cent increase in Market Street fares, it has been shown, did not, before the war improve the company's earning position and will again produce a

pected to correspond, in an opposite direction, to the effect of charging a higher fare than the earlier five-cent fare. The effect of the gradual increase from the five-cent fare to the seven-cent fare is shown in the record in great detail and with positive accuracy, based on petitioner's actual experience, and is briefly reviewed in the Commission's decision. (Appendix to Petition, p. 35.) Witness Hunter testified (Tr., p. 12) that during the five-cent fare period (1933 to 1936) Market Street carried 71 per cent and Municipal Railway 29 per cent of the combined traffic, with

loss under more normal transportation conditions. *Gross and net earnings prior to 1942 fell to the lowest point in more than 20 years and the loss in revenue passengers heavily outweighed the increase in the fare.* The company, prior to the war, would have been financially much better off under the continued five-cent fare.

"The record clearly indicates that the number of revenue passengers will be substantially greater with a lower fare than with the present seven-cent rate. In the prewar period we may safely assume that this number, with a continued five-cent fare, would have been about as large, taking into account abandoned lines and expansion of Municipal operations, as it was prior to the rate increases in July 1937." (Emphasis supplied.)

And the last quotation from the Commission's decision on this subject, (Appendix to Petition, p. 44):

"We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions." (Emphasis supplied.)

revenues following approximately the same division. During the three-year period 1939 to 1941, with petitioner's fare at seven cents, and with the Municipal fare continuing at five cents during that period, petitioner's traffic fell to approximately 52 per cent of the combined fare passengers, and its revenues, *notwithstanding a 40 per cent increase in fares*, fell to about 60 per cent of the combined passenger revenue. Witness Hunter further testified (Tr., p. 17) that despite the fare increases petitioner's net income was lower, in each of the years 1938 to 1941, than the lowest net operating income before the increases. Witness Kahn, petitioner's president (Tr., p. 237), testified that the combination of a two-cent transfer with a five-cent fare placed petitioner in a worse financial condition than it had been in theretofore. The loss of revenue passengers on petitioner's lines, comparing the year 1937 (five-cent fare) with the [fol. 174] year 1940 (seven-cent fare), was 52,048,000, declining from 141,972,000 in the former year to 89,924,000 in the latter year, a loss of approximately 37 per cent. It is to be noted, however, that the Commission in its estimate of what the six-cent fare would produce under present war-time conditions, did not assume any increase proportionate to the traffic loss that occurred as a result of the increased rates, but *based its estimate upon an expectation of a much smaller increase of approximately 10 per cent*. The inseparable connection between service, traffic and revenue, and the interdependence of one of these factors upon the other, must not be lost sight of. The company, it may truthfully be said, has, within large limits, in its power to determine what its traffic and revenue shall be. With over eighty of petitioner's serviceable streetcars out of service and standing idle in the company's car barns (about one-fifth of its serviceable streetcar equipment), it is obvious that fewer passengers can be transported and that revenues must be lower than with all or the maximum amount of serviceable equipment in operation.

Petitioner distorts the clear language of the decision of the Commission when it alleges in its petition that the "true decrease in net with the application of a 1-cent fare reduction would be at least half the \$2,163,000 decrease suffered with a 2-cent fare reduction, or at least

\$1,081,500." (Petition, p. 16.) In its criticism of the Commission's decision on this point, petitioner has deliberately and continually ignored the Commission's conclusion [fol. 175] and finding of fact *that a reduction in the rate of fare will most certainly result in an increase in traffic*. In estimating how great such an increase would be, under present conditions, the Commission did not make use of blind assumptions or of estimates outside of the record, but it based its conclusions upon the actual experience of the company during the last few years and upon the company's own sworn reports filed with this Commission and upon the testimony of witnesses appearing in this proceeding. The Commission, it should be noted, did not assume, however, that the increase in traffic under a lowered fare would be as great as the actual decrease had been under the increased fare. The Commission concluded that there would be a much smaller increase under the reduced fare than the actual decrease experienced by the company when the company's fares were raised from five cents upward. It was not necessary to make any "assumptions." The record contains much evidence to sustain the Commission's conservative conclusions and the allegation cannot be sustained that the petitioner would incur a deficit or a confiscatory rate of return under a six-cent fare.

Petitioner refers to the operating results for 1942. There is no dispute as to the correctness of the figures for that year, including a net return figure of \$1,069,914, shown in the tabulation in the Commission's decision. (Appendix to Petition, p. 34.) These figures, it is to be remembered, are from petitioner's own 1942 income statement furnished the Commission in petitioner's verified [fol. 176] annual report. Petitioner contends that \$750,000 should have been shown for depreciation expenses for the year 1942, instead of \$500,000. (Petition, p. 13.) The Commission suggests that such contention is misleading. The depreciation practices of the company are in evidence in this record in great detail. For eight years prior to and including 1942 the company voluntarily charged \$500,000 annually to depreciation, and each year's net income is stated on that basis. The Commission sees no reason why petitioner's own provision for depreciation, as shown in

its financial statements, should have been changed by the Commission for the year 1942, any more than for any other year. The traffic, the gross revenue, the expenses and the net revenue are not assumptions made by the Commission, but reflect petitioner's sworn statements as presented to the Commission and to petitioner's stockholders in its annual reports for that year.

Next, the petition alleges that the Commission made "assumptions" of the results of operation for the year 1943 under the seven-cent fare. A similar contention was advanced by petitioner in seeking rehearing before the Commission.

It is interesting to note that petitioner seems to have altered its position somewhat. In seeking rehearing before the Commission petitioner declined to stipulate that actual 1943 results might be compared with the figures appearing in the Commission's decision. (Appendix to Petition, pp. 112-113.) There one of petitioner's objections to the decision was based upon the contention that the [fol. 177] Commission considered actual operating figures for eight months of the year and made assumptions for the remaining four months. The Commission's conclusions were that with a seven-cent fare continued in effect, and with the quantity of service continued and the number of cars operating as theretofore, the gross revenue for the full year 1943 would be \$8,700,000, expenses \$7,940,000, and the net return \$760,000, with a rate of return of 9.6 per cent on the rate base.

In its petition to this Court petitioner apparently makes use of the actual results of operation for the year 1943, the month of December alone being estimated because not all figures for that month were then available. (Petition, p. 17.) Petitioner states that for 1943 its gross operating revenue will be \$8,549,010; expenses, including \$750,000 for depreciation but including nothing for federal income taxes, will be \$7,660,319; and that the resulting net return will be \$888,691. The Commission concluded that for 1943 petitioner's gross revenue, at the seven-cent fare would be \$8,700,000, expenses \$7,940,000 and net return \$760,000, or a rate of return on the rate base used of 9.6 per cent. Comparing the Commission's conclusions with the figures shown in the petition, it appears that the Commission's conclusion, as to the amount of gross revenue for the full

year 1943, was \$151,000 too high, and, as to the amount of expenses for the year, was \$279,681 too high. From such comparison it also appears that the Commission's conclusion concerning the amount of net revenue was \$128,691 too low, and that the actual rate of return on the rate base [fol. 178] for the year was 11.2 per cent instead of the Commission's figure of 9.6 per cent.

The significance of the above comparison is that petitioner's own figures, apparently actual except for the month of December, clearly show that in effect the Commission *under-estimated* 1943 net earnings and rate of return by about 15 per cent. The controlling and significant figures, of course, are the profit or net earning figure and the rate of return.

The Commission submits that petitioner has not sustained the burden of showing that the order under attack will produce confiscatory results. As stated in *Federal Power Commission v. Hope Natural Gas Co.*, supra, "the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment *which carries a presumption of validity*. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." (Emphasis supplied.)

The Commission recognizes that changing conditions foreclose the establishment of rates at any given time with assurance of permanency. The proceeding before the Commission presents no exception to the rule. With a clear perception of realities, the Commission ordered that the proceeding remain open for further investigation, and directed petitioner to file monthly statements of actual results. (Appendix to Petition, pp. 44-46.) This was done [fol. 179] in order that the Commission, of its own volition, might make whatever adjustments future conditions require, to the end that fares may be kept at a just and reasonable level. It was also done so that the Commission might be in a position to respond promptly to any reasonable request by the petitioner for a modification of the Commission's order. (See *Clark's Ferry Bridge Co. v. Public Service Commission*, 291 U.S. 227, 241.)

The Commission respectfully submits that the petition to the Court does not show that the Commission has ex-

ceeded its authority or acted in violation of petitioner's constitutional rights.

Dated, San Francisco, California, February 9, 1944.

Everett C. McKeage, Roderick B. Cassidy, Wyman C. Knapp, Frank B. Austin, John M. Gregory,
Attorneys for Railroad Commission of the State
of California.

[fol. 180]. Receipt of a copy of the within is hereby admitted this 9th day of February, 1944.

Cyril Appel, Pillsbury, Madison & Sutro, Attorneys
for Petitioner.

[fols. 181-183] [File endorsement omitted]

[fol. 184] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

REPLY OF PETITIONER TO ANSWER OF RAILROAD COMMISSION
TO PETITION FOR WRIT OF REVIEW—Filed February 15,
1944

In replying to the Commission's answer to the petition for review, as permitted by the Rules of Court, petitioner will emphasize just one point.

The only question that the Court is called upon to decide at this time is whether petitioner has presented a timely and sufficient pleading justifying the issuance of [fol. 185] the writ of review. The function of such a writ is to bring up a certified record for judicial review. Petitioner will have no means of demonstrating that the Commission's order should be set aside unless it be permitted to show, by brief and argument, *with reference to that record*, that its constitutional rights have been invaded. It will not have any judicial review unless that record be brought before the Court. A construction of Section 67 of the Public Utilities Act, which would so deny judicial review, would render that statute invalid under the California Constitution and under the Fourteenth Amendment of the Federal Constitution.

Petitioner filed a verified petition for review. Under the law of this state no other pleading is permitted to

initiate a case at law or in equity to obtain a judicial review of a Commission order. The petition alleged that the Commission's action requiring petitioner to reduce its fares was in violation of constitutional right because the Commission had not accorded petitioner a fair hearing, had not acted upon the evidence and had established fares that were confiscatory in their effect. There cannot be a determination of those questions without an examination of the record. The law contemplates that the full record in the Commission's proceeding be certified by the Commission, and only this Court can command the production of that record.

The Commission has filed an answer to the petition for review and also an argument in defense of its order. The answer declares only that the Commission "denies certain allegations in the petition" and declares that "the alleged [fol. 186] facts necessarily are subject to explanation." In its argument the Commission asserts that its order is supported by the record. Without quoting any specific testimony, it makes numerous page references to the transcript of testimony in support of this contention. The answer, therefore, is in no sense a demurrer to the petition. It does not challenge the sufficiency of petitioner's showing to justify the issuance of the writ. It does not pray that the writ not be issued. The answer is an argument to the Court that the record supports the order; an argument directed to the merits. The Commission, by invoking the record, thereby demonstrates that the record must be brought before the Court.

The questions which petitioner asks this Court to determine upon review are substantial constitutional questions. They are appropriately presented in the petition and are urged in good faith. They are questions that cannot be decided upon examination of the pleadings alone. They are questions which demand judicial inquiry into the facts as well as the law, and the judicial review will not be adequate unless this Court "exercise an independent judgment on the law and the facts," as the statute requires.

As permitted by statute the petitioner alleged facts necessary and proper to support the prayer for a stay because of the immediate and irreparable injury that petitioner would suffer were the Commission's order put into effect. Petitioner renews its prayer for a stay of the Commission's order pending judicial review. Appended

hereto as Exhibit H is the Commission's order, with two [fol. 187] concurring opinions, made February 3, 1944, extending the effective date of such decision to and including February 29, 1944. The Court may issue a stay order either with or without notice to the Commission. As a relatively short time will remain for the Court to set for hearing petitioner's application for a stay upon five days' notice, petitioner hereby further prays that, if necessary, the Court before February 29, 1944, grant without notice a temporary stay of the Commission's said decision. The propriety and necessity for such a stay fully appears from the petition already on file.

Dated, San Francisco, February 15, 1944.

Market Street Railway Company, by Cyril Appel,
Pillsbury, Madison & Sutro, Its Attorneys.

[fol. 188] *Duly sworn to by Samuel Kahn. Jurat omitted in printing.*

[fols. 189-200] (Supplemental Points and Authorities in Support of Reply of Petitioner to Answer of Railroad Commission to Petition for Writ of Review, and Order Postponing Effective Date of Decision No. 36739, omitted in printing.)

[fol. 201] Due service and receipt of a copy of the within is hereby admitted this 15th day of February, 1944.

Everett C. McKeage, Roderick B. Cassidy, Wyman
C. Knapp, Frank B. Austin, John M. Gregory,
Attorneys for Railroad Commission of the State
of California.

[fol. 202] IN THE SUPREME COURT OF CALIFORNIA

IN BANK

[Title omitted]

ORDER GRANTING WRIT OF REVIEW—Filed February 28, 1944

Let a writ of review issue, returnable before this Court at its courtroom in San Francisco, on July 11, 1944, at ten o'clock a. m.

Dated Feb. 28, 1944.

Gibson, Chief Justice

[File endorsement omitted.]

[fol. 202a] IN SUPREME COURT OF CALIFORNIA

IN BANK

[Title omitted]

ORDER AMENDING ORDER GRANTING WRIT OF REVIEW—Filed
March 2, 1944

The order directing issuance of a writ of review filed herein on February 28, 1944, is hereby amended to read as follows: Let a writ of review issue, returnable before this Court at its courtroom in San Francisco, on Tuesday, March 21, 1944, at ten o'clock a. m.

Dated March 1, 1944.

Gibson, Chief Justice.

[File endorsement omitted.]

[fol. 203] IN SUPREME COURT OF CALIFORNIA

S. F. No. 16988

MARKET STREET RAILWAY COMPANY, Petitioner,

VS.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and
Franck R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachse and Frank W. Clark, the Members of and
Constituting the Railroad Commission of the State of
California, Respondents

[File endorsement omitted.]

WRIT OF REVIEW—Filed March 6, 1944

To the Railroad Commission of the State of California and
Franck R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachse and Frank W. Clark, the members of and
constituting the Railroad Commission of the State of
California:

Whereas it manifestly appears to us from the verified
petition of the above named petitioner on file herein that in
a certain proceeding entitled,

“In the Matter of the Investigation upon the Com-
mission’s own motion into the reasonableness of the

rates and charges, and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company, Case No. 4680,"

you, exercising judicial functions, have exceeded your [fol. 204] jurisdiction, and that petitioner has no appeal or other plain speedy and adequate remedy; and being therefore willing to be certified of the said action or proceeding:

We Therefore Command You that you certify fully and return to this Court within ten (10) days from the date of the issuance of this writ, a full and complete record of all proceedings in said case No. 4680, for the purpose of having the lawfulness of your decision and order of November 30, 1943, in said proceeding enquired into and determined by this Court.

We further Command You that you make return to this writ before the Supreme Court of the State of California, *en banc*, at its Courtroom in San Francisco, California, on March 21, 1944, at 10 o'clock A.M.

Witness the Honorable Phil S. Gibson, Chief Justice of the Supreme Court of the State of California, at San Francisco, California, this 6th day of March, 1944.

By A. V. Haskell, Clerk; by S. C. Shenk, Deputy.
(Seal.)

Approved as to form this 6th day of March, 1944.

Cyril Appel, Pillsbury, Madison & Sutvo, Attorneys
for Petitioner.

Approved as to form this 6th day of March, 1944.

Everett C. McKeage, Attorney for Respondents.

Receipt of a copy of the within Writ of Review is hereby acknowledged this 6th day of March, 1944.

Everett C. McKeage, R. B. Cassidy, Wyman C. Knapp, Frank B. Austin, John M. Gregory, Attorneys for Respondents.

[fol. 205]

[File endorsement omitted]

[fol. 206] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

RETURN TO WRIT OF REVIEW AND MEMORANDUM OF DOCUMENTS—Filed March 8, 1944

I, H. G. Mathewson, Secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as Secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record and proceedings before the Railroad Commission entitled as follows:

[fol. 207] "In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company, Case No. 4680."

That attached hereto are the pleadings, transcript of testimony, exhibits and record of said proceedings before the Railroad Commission of the State of California.

In Witness Whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California, this 8th day of March, 1944.

H. G. Mathewson, Secretary, Railroad Commission of the State of California (Seal).

[fol. 208] MEMORANDUM OF DOCUMENTS

Pleadings

1. Order Instituting Investigation into the reasonableness of rates, etc., of Market Street Railway Company, filed April 22, 1943, Case No. 4680.

2. Affidavit of Service of order instituting investigation, filed April 22, 1943.

3. Notice of Hearing setting Case No. 4680 for hearing on May 10, 1943, dated April 22, 1943.

4. Notice of Adjourned Hearing, set for July 15, 1943, dated June 9, 1943.

5. Decision No. 36739 issued by Railroad Commission on November 30, 1943.

[fol. 209] 6. Petition for Rehearing, filed by Market Street Railway Company on December 9, 1943.

7. Order Granting Oral Argument on petition for rehearing, issued December 15, 1943.

8. Notice of Hearing of oral argument on petition for rehearing, set for February 3, 1944, dated February 2, 1944.

9. Decision No. 36821, Opinion and Order Denying Rehearing, issued by Railroad Commission January 12, 1944.

10. Petition for extension of effective date of Decision No. 36739, filed by Market Street Railway Company on February 1, 1944.

11. Decision No. 36852, order postponing effective date of Decision No. 36739.

Exhibits

12. Ex. 1. Comparative and combined income statements of Market Street Railway Company and Municipal Railway, 1932 through 1942, and 1942 and 1943 by months; charts showing fare passengers, passenger revenue, and operating revenue and distribution of expenses, filed May 10, 1943.

13. Ex. 2. Comparative balance sheet, analysis of profit and loss account, comparative income statement, operating revenues and expenses, all for the years 1938-1942, both inclusive, filed May 10, 1943.

14. Ex. 3. Tabulation showing revenue rolling stock of Market Street Railway Company as of May 1, 1943, filed May 10, 1943.

15. Ex. 4. Summary of causes of "turn-in" of street cars, March and April of 1943, filed May 10, 1943.

16. Ex. 5. Operative motor coach equipment in service May 1, 1943, filed May 10, 1943.

17. Ex. 6. Traffic check, summary of travel characteristics at selected locations, including Municipal Railway lines at Market Street at Van Ness, filed May 10, 1943.

[fol. 210] 18. Ex. 7. Report of the obligations as to the use of streets and condition of streets used by the Market Street Railway Company, filed July 15, 1943.

19. Ex. 8. Excerpt from minutes of directors' meeting of September 24, 1942, Market Street Railway Company, re

sale of operative properties to City of San Francisco, filed July 15, 1943.

20. Ex. 9. Excerpt from minutes of directors' meeting of March 25, 1943, Market Street Railway Company, re sale of operative properties to City of San Francisco, filed July 15, 1943.

21. Ex. 10. Report on the results of operation of Market Street Railway Company, 1922-1942, filed July 15, 1943.

22. Ex. 11. Tables and charts relating to manpower and service, filed July 15, 1943.

23. Ex. 12. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

24. Ex. 13. Photograph, Kearney and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

25. Ex. 14. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

26. Ex. 15. Photograph, Third and Market Streets, taken on June 15, 1943, 5:30 p. m., filed July 15, 1943.

27. Ex. 16. Photograph of storage yard at Irving Street, Lincoln Way, Funston Avenue and 14th Avenue, taken on July 14, 1943 at 10:30 a. m., filed July 15, 1943.

28. Ex. 17. Report dealing with service on Market Street Railway, filed July 15, 1943.

29. Ex. 18. Chart, flow of street car and bus traffic on and across Market Street, traffic in maximum one hour period 4:30 p. m. to 5:30 p. m., May 24, 26 and 28, 1943, filed September 15, 1943.

30. Ex. 19. Supplemental indenture, Market Street Railway Company and Wells Fargo Bank & Union Trust Co., dated April 1, 1940, filed September 15, 1943.

[fol. 211] 31. Ex. 20. Changes proposed by Division 1004, A. A. of S. E. R. and M. C. E. of A. in the agreement with Market Street Railway Company, filed September 15, 1943.

32. Ex. 21. Expansion of service rendered by the Municipal Railway of San Francisco, filed September 15, 1943.

33. Ex. 22. A study to determine the net income of Market Street Railway Company for the first six months of calendar years 1937, 1938 and 1939 if a 5¢ fare with free transfers had been in effect, filed September 15, 1943.

34. Ex. 23. Statement re platform personnel, wages, etc., of Municipal Railway, filed September 15, 1943.

35. Ex. 24. Railroad Commission Decision No. 31472 in Application No. 21115, filed September 15, 1943.

36. Ex. 25. Railroad Commission Decision No. 31603 in Application No. 21115, filed September 15, 1943.

37. Ex. 26. Statement re manpower and employment, Market Street Railway Company, filed September 15, 1943.

38. Ex. 27. Service complaints received by Market Street Railway Company from the Railroad Commission, year 1943, filed September 15, 1943.

39. Ex. 28. Service complaints received by Market Street Railway Company by letter from patrons, year 1943, filed September 15, 1943.

40. Ex. 29. Changes in operating practices, revision of routes in accordance with directives or suggestions of the Office of Defense Transportation, filed September 15, 1943.

41. Ex. 30. Statement re inspectors, Market Street Railway Company, filed September 15, 1943.

42. Ex. 31. Statement re service to shipyards and war industries, filed September 15, 1943.

43. Ex. 32. Letter of September 9, 1943 from Office of Defense Transportation to Market Street Railway Company, filed September 15, 1943.

44. Ex. 33. Statement re actual revenue passengers and car and bus hours for the first six months of 1937, 1938 and 1939; etc., filed pursuant to Transcript, p. 342.

[fol. 212]

Transcripts

Volume 1. Transcript, Hearing at San Francisco (Pages 1 to 53, inclusive). May 10, 1943.

Volume 2. Transcript, Hearing at San Francisco (Pages 54 to 169, inclusive). July 15, 1943.

Volume 3. Transcript, Hearing at San Francisco (Pages 170 to 343, inclusive). September 15, 1943.

Volume 4. Transcript, Hearing at San Francisco (Pages 344 to 461, inclusive). December 21, 1943.

Volume 5. Transcript, Hearing at San Francisco (Pages 462 to 547, inclusive). December 22, 1943.

Volume 6. Transcript, Hearing at San Francisco (Pages 548 to 585, inclusive). February 3, 1944.

[fol. 213]

[File endorsement omitted]

[fol. 214] IN SUPREME COURT OF CALIFORNIA

[Title omitted].

STIPULATION RE SUPPLEMENTAL RETURN—Filed March 23,
1944

Whereas, at the hearing of May 10, 1943 before the Railroad Commission in *Re Market Street Railway Company*, Case No. 4680, it was stipulated that the following documents might be deemed a part of the record by reference (Tr., pp. 19-20),

Annual reports of Market Street Railway Company, filed with the Railroad Commission, for the years 1938 to 1942, inclusive,

Annual reports of Market Street Railway Company to its stockholders, filed with the Railroad Commission, for the years 1938 to 1942, inclusive,

Monthly reports of Market Street Railway Company, filed with the Railroad Commission, for the period January, 1938 to April, 1943, inclusive;

[fol. 215] and

Whereas, at the hearing before said Commission on September 15, 1943, in said Case No. 4680, it was stipulated that certain exhibits introduced in evidence in an earlier proceeding before said Commission (Application No. 21115) might be deemed a part of the record in said Case No. 4680 by reference, said exhibits being Exhibits 45, 46, 6, 17, and 23 in Application No. 21115 (Tr., p. 268);

It is hereby stipulated that respondent Railroad Commission may file a Supplemental Return to the Writ of Review herein, to which Supplemental Return shall be attached the various documents hereinabove mentioned.

Dated, San Francisco, California, this 23d day of March, 1944.

Cyril Appel, Pillsbury, Madison & Sutro, Attorneys
for Petitioner; Everett C. McKenge, Roderick B.
Cassidy, Wyman C. Knapp, Frank B. Austin,
John M. Gregory, Attorneys for Respondent.

[fol. 216] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

SUPPLEMENTAL RETURN TO WRIT OF REVIEW—Filed March 23, 1944

I, H. O. Mathewson, Secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That attached hereto are the original Annual Reports of Market Street Railway Company to the Railroad Commission, for the years 1938, 1939, 1940, 1941 and 1942, filed with the Railroad Commission pursuant to Section 29 of the Public Utilities Act.

That attached hereto are copies of Annual Reports of Market Street Railway Company to its stockholders, for the years 1938, 1939, 1940, 1941 and 1942, ~~filed with the~~ [fol. 217] Railroad Commission pursuant to General Order No. 65 of said Commission.

That attached hereto are the Monthly Reports of Market Street Railway Company for the period January, 1938 to April, 1943, both inclusive, filed with the Railroad Commission pursuant to General Order No. 65 of said Commission.

That attached hereto are Exhibits 45, 46, 6, 17 and 23 in that certain proceeding before the Railroad Commission entitled

“In the Matter of the Application of Market Street Railway Company for an order of the Railroad Commission of the State of California authorizing emergency increases in certain rates”,

and being Application No. 21115.

That each of the above-mentioned documents is a part of the record by reference in *Re Market Street Railway Company*, Case No. 4680.

In witness whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California, this 23rd day of March, 1944.

H. G. Mathewson, Secretary, Railroad Commission
of the State of California. (Seal.)

[fol. 218] SUPPLEMENTAL MEMORANDUM OF DOCUMENTS

1. 1938 Annual Report of Market Street Railway Company to Railroad Commission.

2. 1939 Annual Report of Market Street Railway Company to Railroad Commission.

3. 1940 Annual Report of Market Street Railway Company to Railroad Commission.

4. 1941 Annual Report of Market Street Railway Company to Railroad Commission.

5. 1942 Annual Report of Market Street Railway Company to Railroad Commission.

6. 1938 Annual Report of Market Street Railway Company to Stockholders.

7. 1939 Annual Report of Market Street Railway Company to Stockholders.

[fol. 219] 8. 1940 Annual Report of Market Street Railway Company to Stockholders.

9. 1941 Annual Report of Market Street Railway Company to Stockholders.

10. 1942 Annual Report of Market Street Railway Company to Stockholders.

11. 1938 Monthly Reports of Market Street Railway Company.

12. 1939 Monthly Reports of Market Street Railway Company.

13. 1940 Monthly Reports of Market Street Railway Company.

14. 1941 Monthly Reports of Market Street Railway Company.

15. 1942 Monthly Reports of Market Street Railway Company.

16. Monthly Reports of Market Street Railway Company, January, 1943 to April, 1943, both inclusive.

17. Exhibit No. 45 in Application No. 21115, Revised Col. 7 and Col. 8 of Exhibit No. 36, etc.

18. Exhibit No. 46 in application No. 21115, Table re revenue June to September, inc., etc.

19. Exhibit No. 6 in Application No. 21115, Estimated effect of change in fare structure.

20. Exhibit No. 17 in Application No. 21115, Estimated effect of 7-cent fare.

21. Exhibit No. 23 in Application No. 21115, Estimated effect of 6-cent fare.

Folder I

Annual Reports of Market Street Railway Company to Railroad Commission, 1938-1942, both inclusive, and
Annual Reports of Market Street Railway Company to Stockholders, 1938-1942, both inclusive.

Folder II

Monthly Reports of Market Street Railway Company, January, 1938 to April, 1943, both inclusive.

Exhibits 45, 46, 6, 17 and 23 in Application No. 21115 before Railroad Commission.

[fol. 220]

[File endorsement omitted]

BEFORE THE RAILROAD COMMISSION OF CALIFORNIA

Case No. 4680

In the Matter of the Investigation upon the Commission's Own Motion into the Reasonableness of the Rates and Charges, and into the Sufficiency and Adequacy of the Operations, Service, and Facilities of the Market Street Railway Company

ORDER INSTITUTING INVESTIGATION—Filed April 22, 1943

By the COMMISSION:

The Commission believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing,

It Is Ordered that an investigation be and hereby is instituted upon the Commission's own motion into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company; and

It Is Further Ordered that a public hearing in said investigation be had before the Commission en banc on the 10th day of May, 1943, at 10:00 o'clock a. m., in the Court

Room of the Railroad Commission, State Building, San Francisco, California; and

It Is Further Ordered that the Secretary of the Commission cause to be served on Market Street Railway Company a certified copy of this order at least ten (10) days prior to said hearing.

Dated, San Francisco, California, this 21st day of April, 1943.

Franck R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachse, Frank W. Clark, Commissioners.

[fol. 221] (Affidavit of Service of Order instituting investigation, filed April 22, 1943, omitted in printing.)

[fol. 222] (Copy)

BEFORE THE RAILROAD COMMISSION OF THE STATE OF
CALIFORNIA

Case No. 4680

In the Matter of the Investigation upon the Commission's Own Motion into the Reasonableness of the Rates and Charges, and into the Sufficiency and Adequacy of the Operations, Service, and Facilities of the Market Street Railway Company

NOTICE OF HEARING

To: Market Street Railway Company, Samuel Kahn, President and General Manager, 58 Sutter St., San Francisco, Calif.; California Street Cable Railroad Co., 1061 Hyde Street, San Francisco, California; Hon. Angelo J. Rossi, Mayor of San Francisco, City Hall, San Francisco, California; Department of Public Works, City and County of San Francisco, City Hall, San Francisco, California; John J. O'Toole, City Attorney, San Francisco, California; Chamber of Commerce, San Francisco, California; Board of Supervisors, City Hall, San Francisco, Calif.; Office of Defense Transportation, 1355 Market St., San Francisco, Calif.; Board of Public Utilities, City and County of San Francisco, City Hall, San Francisco, California; Carroll Newburgh, 1801 Franklin St., Apt. 401, San Francisco.

See list attached.

Notice Is Hereby Given that the Railroad Commission of the State of California has set a hearing in the above entitled matter before the Commission en banc for Monday, May 10, 1943, at 10 a. m., in the Commission Courtroom, State Building, San Francisco, California, at which time and place all interested parties may appear and be heard.

By Order of the Railroad Commission.

Dated at San Francisco, this 22nd day of April, 1943.

(Signed) H. G. Mathewson, Secretary Railroad Commission of the State of California.

EM.

[fol. 223]

Copy

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation upon the Commission's Own Motion into the Reasonableness of the Rates and Charges, and into the Sufficiency and Adequacy of the Operations, Service, and Facilities of the Market Street Railway Company

Case No. 4680

NOTICE OF ADJOURNED HEARING

To: Market Street Railway Company, Samuel Kahn, President and G. M., 58 Sutter St., San Francisco, California; Cyril Appel, Ivoris R. Danes and Samuel Kahn, Attorneys, 58 Sutter St., San Francisco, California; Angelo J. Rossi, Mayor of San Francisco, City Hall, San Francisco, California; John J. O'Toole, City Attorney, City Hall, San Francisco, California; Dion R. Holm, Assistant City Attorney, City Hall, San Francisco, California; Paul Beck, City Hall, San Francisco, California; Thomas A. Brooks, Chief Administrative Officer, San Francisco, California

Sent 6/15/43.

Notice Is Hereby Given that the Railroad Commission of the State of California has set an adjourned hearing in the

above entitled matter before the Commission en banc for Thursday, July 15, 1943 at 10 a. m., in the Commission Courtroom, State Building, San Francisco, California, at which time and place all interested parties may appear and be heard.

By Order of the Commission.

Dated at San Francisco, this 9th day of June, 1943.

(Signed) H. G. Mathewson, Secretary Railroad Commission of the State of California.

EM.

[fol. 224] BEFORE THE RAILROAD COMMISSION OF CALIFORNIA

Decision No. 36739

Case No. 4680

In the Matter of the Investigation upon the Commission's Own Motion Into the Reasonableness of the rates and Charges, and Into the Sufficiency and Adequacy of the Operations, Service, and Facilities of the MARKET STREET RAILWAY COMPANY

Cyril Appel, Ivores R. Danes, and Samuel Kahn, for the Market Street Railway Company.

Angelo J. Rossi, Mayor, John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul Beck, for the City of San Francisco.

Mrs. Helen Negrin, in propria persona.

BY THE COMMISSION:

OPINION—November 30, 1943

In April of this year we came to the conclusion that the public interest demanded an inquiry into the local transportation situation in San Francisco, in so far as the matter is within our jurisdiction, and ordered an investigation into the rates, charges, classifications, rules, and regulations of Market Street Railway Company (hereinafter sometimes referred to as the company), and also into the reasonableness, sufficiency, and adequacy of its operations, service, and facilities.

Hearings before the Commission en banc were held in San Francisco on May 10, July 15, and September 15,

1943. Our staff made its studies and investigation in part prior to the hearing of May 10, and in part during the course of the proceeding, and introduced the results in the form of 18 exhibits.¹ The company put 14 exhibits in evidence,² and the City of San Francisco one.³ Upon the completion of testimony on September 15, 1943, the case was [fol. 225] taken under submission and is now ready for decision.

Background of Present Proceeding

The issues in this case can be better understood after a brief review of the company's history, particularly its recent history since 1937, and the previous rate decisions of this Commission.⁴

Public transportation in San Francisco goes back to 1852 when an omnibus service began to operate over a few of the city's streets. In 1860 the first street railway, the Market Street-Mission Dolores line, was opened for service. In 1873 the first cable line was put into operation and later expanded. This form of mass transportation met with such success that during the next ten years a number of horsecar lines were converted to cable lines. Electric street railway service came to San Francisco in 1891. The Market Street Railway Company was incorporated in October 1893 and took over 11 of the 17 streetcar lines then independently operated in San Francisco. Additional properties were later acquired by that company.

The 1900 San Francisco city charter declared in favor of municipal ownership of public utilities and provided that franchises could be granted to privately-owned street railway companies for a period not to exceed 25 years, at the end of which time all tracks and overhead construction were to revert to the city at no cost.

United Railroads of San Francisco was incorporated in 1902, taking over the properties of its predecessor Market Street Railway Company and five other lines, and bring-

¹ Exhibits Nos. 1 to 6, incl.; 8 to 17, incl.; and No. 33.

² Exhibits Nos. 19 to 32, incl.

³ Exhibit No. 7.

⁴ Decision No. 29889—40 CRC 525 (6-21-37).

Decision No. 30849—41 CRC 349 (5-9-38).

Decision No. 31472—41 CRC 651 (11-23-38).

ing together under one control 229 miles of track, a large portion of which was cable operated. This system suffered heavily in the earthquake and fire of 1906, and a considerable reconstruction program was carried out between 1906 and 1910, with some replacement of damaged cable lines by overhead electric traction lines.

[fol. 226] In December 1912, the City and County of San Francisco placed in operation a street railway line on Geary Street from Kearny Street to 33rd Avenue. It replaced the old Geary Street cable line. During the next few years the Municipal system, which is not under the Commission's jurisdiction, expanded rapidly, through the construction of lines to serve the Panama Pacific Exposition in 1915.

Because of its failure to pay interest on its outstanding 4% bonds, United Railroads of San Francisco properties were sold at a foreclosure sale. They were acquired by representatives of the bond holders who transferred them on or about April 1, 1921 to Market Street Railway Company, the company now before us. In 1925 the Standard Power and Light Corporation acquired about a 40% stock interest in and virtual control of Market Street Railway Company.

Prior to 1930 a number of the company's franchises expired. Certain lines were operated under sufferance by the city pending clarification of the franchise situation. In November, 1930, the voters of San Francisco adopted and subsequently the State Legislature ratified a charter amendment permitting the company to surrender its remaining franchises to the city and county in exchange for a 25-year operating permit. This permit apparently annulled the 1900 city charter provision requiring the reversion, without cost to the city, of property covered by 25-year franchises; the city, at any rate, did not enforce such charter provision. The 1930 permit provides that the city may acquire the company's properties at a fair price during the life of the permit.

Under ordinance of the City and County of San Francisco one man streetcar operation was prohibited. In 1933 the company sought repeal of this ordinance. The petition was denied by the city authorities but the company succeeded in 1934 in obtaining a temporary injunction against the enforcement of the ordinance. The city ap-

pealed and the one-man car issue was carried to the U. S. Supreme Court, with the result that the city's two-man car ordinance was upheld. The company had, prior to the [fol. 227] final determination of the law suit, commenced one-man operation on a number of its lines and continued such operation in greater or lesser degree until February 1939.

The first bus or motor coach line was operated in 1925 and at the end of 1938 the company had 11 motor coaches in operation. From 1939 forward some further change-over from electric and cable car operation to motor coach service took place and 125 coaches were in service on December 31, 1942. Two cable lines remain in operation on the company's system at the present time.

The expansion of the Municipal Railway system since 1912 became an increasingly serious competitive factor in the operations and finances of the company. Agitation for acquisition of the company's system by the city commenced in 1912 and has continued more or less actively to the present time. The question of purchase through the medium of tax lien bonds, or railway revenue bonds, has been submitted to the voters on a number of occasions and been rejected every time. The most recent elections were held in November 1942 and in April 1943.

Most of the company's original franchises contained a five-cent fare clause. The five-cent fare, with transfer privileges, continued uninterruptedly on both the company's and the Municipal lines until July 6, 1937. On that date the first fare increase, granted by this Commission, became effective on the company's system, but the five-cent fare remained unchanged on the city-owned lines.

In 1937 the company applied to the Commission for a rate increase to a seven-cent cash fare. In decision No. 29889 this application was denied but a two-cent transfer charge and an increase from 20 to 25 cents for a Sunday and holiday pass was granted. In March 1938 the company again petitioned for an increase to a seven-cent cash [fol. 228] fare, with reduced rates to school children. In supplemental decision No. 30849 the Commission authorized a seven-cent cash fare, with four tokens for 25 cents on other than interurban cars, 16 rides for 50 cents to school children, and an increased fare on interurban lines. A few months later, in a second supplemental application,

the company again petitioned for a straight seven-cent fare and asked for authority to discontinue the token rate. In decision No. 31472 of November 23, 1938, the Commission directed the company to petition the city for authority to abandon operation of certain lines and for relief from "Jitney" competition. The decision authorized the rate increases sought by the company in the event that such authority and relief were not granted by the city on or prior to January 1, 1939. The seven-cent fare became effective on that date and has remained in effect to the present time.⁵

The operating and financial results of this fare change will be referred to later in some detail. Here it is sufficient to say that both traffic and revenue continued to decline and in 1941 reached their lowest point in twenty years.⁶ [fol. 229] The operating income, after operating expenses, depreciation, and taxes, dropped from \$783,486 in 1936 to \$210,345 in 1941, a decline of 73 per cent. In 1942 and 1943 the consequences of the war, together with other causes, brought about an abnormal increase in traffic, increased revenues and expenses, a further marked deterioration in the service to the public, and other difficulties, all before us in this proceeding.

⁵ The fares at present in effect are as follows:

7-cent cash fare in San Francisco, other than on interurban cars, with free transfer;

School children 16 rides for 50 cents, with free transfer;

Sunday and holiday pass, for use in San Francisco, 25 cents;

South San Francisco line, 7 cents;

San Mateo line, 7 cents, fare to be in accordance with the tariff filed with the Railroad Commission on May 23, 1938.

⁶ Comparing 1941 with 1936, the last full year under the five-cent fare:

Year	Revenue		Passenger	
	Passengers	Index	Revenue	Index
1936	153,911,000	100%	\$7,437,039	100%
1941	89,855,000	58	6,010,757	81
Loss	64,056,000	42	1,426,282	19

Service

The principal issue at this time is the adequacy of the service the company is furnishing the public and the character and quality of such service in relation to the rates the public must pay. Operating revenues, operating expenses, operating income (net operating revenue), property value and rate base and rate of return also have their place in this case, but the significance of these items is lost unless past, present and prospective operating and service conditions are kept in mind.

The record shows that service has progressively deteriorated for a number of years, notwithstanding the total 40 per cent rate increase in 1937 and 1938, and is rapidly growing worse under war conditions. We recognize that some of the causes of the present unsatisfactory service are beyond the company's control and cannot justly be charged against this utility's management. All transportation agencies and other utilities, and indeed the entire economy of the country, are laboring under the stress and impact and the difficulties of the world war. Full allowance will be made for this fact in all wartime proceedings before the Commission.

After making such allowance the important question remains to what extent the ratepayer, under war conditions, should be compelled to pay the same or higher rates for an inadequate and inferior product or service while the utility enjoys abnormal profits.

[fol. 230] In this case there is evidence, moreover, of long-time neglect, of mismanagement, of indifference to urgent public need, and of other matters inevitably productive of poor service that by no means were caused by or can be charged to the war, and for the consequences of such failure the company must assume responsibility. The record is voluminous on these points and reference can be made only to the more important and outstanding causes of the unsatisfactory and insufficient service.

Accepted and acknowledged standards exist for measuring the quality and adequacy of mass transportation service in large cities. Mr. Kahn, the company's president, testified that his company does not use or apply any such standards in San Francisco; and the city authorities, under their police power, have not enforced such standards. Mr.

Hunter, the Commission's chief engineer, testified that "for normal times" the service is unreasonably bad.⁷

Aside from general standards, based on vehicle seating capacity and percentage of passengers who cannot be seated, a more specific and direct test of the quality of service can be had through an analysis of the company's operating [fol. 231] schedules, performance records, track and equipment maintenance condition, manpower and employment situation, status of operating supervision, condition of street cars and buses, and the company's depreciation and renewal practices. Comparisons can then be had of the company's present showing and its showing in prior years, and of this company's record in these respects with the record of its competitor, the Municipal Railway, which charges a five-cent fare. The company's seven-cent fare, it will be noted, is 40 per cent higher than that of the Municipal Railway.

Mr. Kahn testified that during normal times the number of car hours operated should and would fluctuate in an approximately direct proportion to the number of passengers [fol. 232] hauled.⁸ Exhibit 22, introduced by Mr. Kahn, is

"Commissioner Clark: May I ask, to your knowledge, has the Railroad Commission, through its staff, made any check to determine to what extent the standard that you refer to is being complied with or violated? A. In Los Angeles or here?

"Q. Here in San Francisco? A. Well, first the rule is not in effect here, but our studies show that it is not being complied with by quite a wide margin now.

"Q. Have you any facts or figures to indicate whether or not, conditions as they are now being experienced by those who are dependent upon street cars are entirely unreasonable in that respect? A. Normal times, I would say 'yes' they are unreasonable in normal times. But, of course, war times you have to put up with things that you just cannot better. But for normal times I would say that this service is unreasonably bad."

⁸ Commissioner Clark: Is it your contention as a transportation engineer that during normal times, during the period which this prophecy was made, this projection was made, that if you had 19½ per cent increase in passengers that wanted to ride that you mean that your average car

based on that assumption. The record developed, however, that the basis used in Exhibit 22 was "entirely theoretical" and in no sense reflected the company's actual operating practice either in "normal" or in "abnormal" times.

With reference to *operating schedules*, Mr. Hunter testified:

"Based upon the foregoing premises our study supports the conclusion that the service on the Market Street Railway should be improved. This conclusion is based upon the record in that the available street cars and buses are, in many instances and particularly during times of peak travel, overcrowded and the service is irregular. The overcrowded condition is accentuated by the equipment not being operated on schedule."

"Our traffic check, as presented by Mr. Hall, shows the cars and buses often operate with an irregular spacing. In other words, there will be long intervals between cars and buses followed by grouping of units."

hours would be $19\frac{1}{2}$ per cent increase also? A. I should think that would generally be—at least it may not follow precisely, but the trend would be that way.

Q. If your opinion was asked as a traffic engineer, traffic engineer counseling with the company, would it be your statement in your best judgment if you had a $19\frac{1}{2}$ per cent increase in traffic, whatever the cause might be, that they should make provision for $19\frac{1}{2}$ per cent increase in car hours? A. Yes, I can only repeat if the trend was developed, why, the company would have to provide for more service. Now, as to whether 19 per cent increase in car hours would precisely equal the 19 per cent in increased traffic I am not prepared to say that would be the exact percentage, but it would approximate that percentage.

Q. In your engineering recommendation, based on experience, can you tell me a single instance in your years of experience or observation that such a condition has resulted? A. Well, I think it results in practically every street car company as the patronage is increased is obliged to add to its service.

Q. That is a general statement, that is not an answer to my question. The question really gets down to engineering, if you have a $19\frac{1}{2}$ per cent increase do you think it is rea-

In some cases it may be noted that units are actually operated ahead of schedule."

And, further:

"Table No. 1 of Exhibit No. 11 shows that during the year ending April 30, 1943, the percentage of motor coaches and street cars which failed to operate in accordance with the schedule requirements steadily increased from 0 to 5.7 per cent. In comparing this record with that of the Los Angeles Railway and Municipal system we find the Municipal operation meets its schedule with few exceptions while the Los Angeles Railway's failures increased from 0.8 per cent to 4.5 per cent. The better record of the Municipal system as compared to that of the Market Street Railway may be explained in part, at least, by the fact that the rate of pay is slightly higher and other attractive labor benefits as shown on Table VII of Exhibit No. 11."

Mr. Hall, transportation engineer of the Commission, testified that in March 1943 an average of 16 cars were out of service daily and 69 trips were lost per day. Car and coach schedules not performed increased from 0.2 per cent in September 1942 to 10.3 per cent in June 1943, while for the Municipal Railway during the same period such non-performance never amounted to more than 0.1 per cent. The unfilled schedules on Los Angeles Railway, in comparison, amounted to 4.5 per cent in April 1943.

sonable to assume that you would have to have a 19½ per cent increase in car hours to handle that induced traffic? You would—don't you agree that you would have an improved load factor likely resulting from that increase? A. Improved load factor?

Q. If along a given right of way you had a 19 per cent improvement in travel conditions, that is, as far as those who wanted to ride, or an increase of 19½ per cent in load, don't you believe you would have an improved load factor on that particular phase of the transit system? A. In normal times?

Q. In any time? A. In normal times I think the increase would be spread over the day following the same pattern as the normal pattern; in abnormal times I do not think any of those rules hold."

[fol. 233] With reference to *operating performance* as reflected in traffic and loading records, the Commission's Transportation Department made traffic checks on April 29 and 30, 1943, (Exh. 6) and found that on the latter two days at the points checked, on inbound morning trips 17,516 seats were available for 25,675 passengers, while on the outbound afternoon trips 20,119 seats were available for 31,399 passengers. These figures represent load factors of 1.5 and 1.6, respectively, and show that for each one hundred seated passengers 50 passengers had standing room only during the morning inbound traffic check period, while 60 had standing room only during the evening outbound period.⁹ Exhibit 6 also shows that on December 9 and 10, 1942, when similar checks were made, substantially the same overload conditions existed. This overloading is aggravated by the fact that many of the company's cars operate ahead of schedule, while in many cases groups of cars travel together, followed by rather long intervals of no cars.

One serious cause of unsatisfactory service for which the company is directly responsible is lack of proper supervision and inspection. Mr. Hunter, in Exhibit 17, recommends:

"Market Street Railway should provide better service by improved field supervision, so that when cars or buses get off schedule and operate in close proximity with the resulting long intervals between units, some of them should be turned back even at the expense of discommoding some passengers in the interest of better overall service on the system."

The same exhibit shows that the salaries of this company's inspectors are low in comparison with those of Municipal Railway, Key System, and Los Angeles Railway.¹⁰ The company is now making efforts to improve this condition.

⁹ Morning inbound check period 6:40 to 8:59 a. m. Evening outbound check period 4:00 to 6:39 p. m.

¹⁰ Field inspectors rate of pay (per month)—Los Angeles Railway, 8 to 9 hours per day, \$215, plus 1½ for overtime over 9 hours Key System, 8-hour day, \$210 to \$225; Municipal Railway, 8-hour day, \$200 to \$240; Market Street Railway, 8-hour day, \$180.

[fol. 234] For a long period of time the company has had a large number of cars (at present approximately 70) available for operation and badly needed to furnish better service, standing idle in storage and out of operation because of alleged manpower shortage. This does not include the cars held out of scheduled operations for lack of operators. Mr. Hall testified that if this idle equipment were put to use it would materially improve the service on heavily loaded lines during peak periods.

The record is voluminous with reference to the deplorable condition of track, of deferred maintenance, unfulfilled street paving obligations, obsolescence of streetcar equipment, and the failure of the company to replace, during prewar years, uneconomical and outdated facilities by modern, more efficient, and more profitable means of mass transportation.

Preliminary inspection of the company's tracks, Mr. Hall testified, showed much deferred maintenance over the entire system and that, while under moderate speeds operation is reasonably safe, it is imperative that the deferred maintenance be caught up with at the earliest possible date. The poor condition of track has not developed during the war period, when valid excuses because of man-power and material shortage can be made, but represents a condition that has progressively grown worse over a long period of years. This is clearly indicated by the fact that during the last 15 years, from 1928 to 1942, there has been a marked and almost continuous reduction in the annual operating expenditures for way and structures, including track and paving and distribution system, and notwithstanding the further fact that the operative property represented by the company's way and structures account is substantially the same in amount in 1942 as it was in 1928.¹¹

¹¹ Table 4—2 of Exhibit 10 shows the company's operating expenses, Group I—Way and Structures, accounts 501 to 529, incl., for the period 1928 to 1942, both inclusive, as follows:

Year	Amount	Index (1928 = 100)	Cost per Car-Mile†	Cost per Car-Hour†	Cost per Mile of Track	Per Cent of Total Operating Expense
1928	\$656,462.25	100%	2.48¢	22.3¢	\$2,315	8.47%
1929	574,991.78	88	2.21	20.2	2,043	7.70
1930	548,853.89	84	2.16	19.8	1,964	7.53
1931	476,423.26	73	1.96	18.2	1,704	6.94

[fol. 235] The footnote below indicates that in 1941 and 1942 only 37 per cent was spent each year for way and structures maintenance, compared with the amount represented by 100 per cent in 1928, and that while in 1928 this expenditure represented 8.47 per cent of the total operating cost, in 1942 only 4.36 per cent of total operating costs was represented by such maintenance. The footnote also shows that even in the prewar year of 1940 these maintenance expenditures were only half of the 1928 amount and represented only 6.5 per cent of total operating expenses.

Mr. Kahn was asked whether he was making, or was contemplating, any financial provision for deferred maintenance. His answer was:

"We have no definite program of setting aside anything for maintenance. We think our first obligation is to discharge our debts, it was money honestly borrowed and we want to honestly repay it. Having gotten our debts out of the way we feel that we will then be in shape to refinance when the war is over or perhaps sooner so that we can improve our service generally, and when I say 'improve,' I mean improve in the broadest sense. That covers both modernization and improvement of present facilities."

[fol. 236] We cannot agree with this concept of the obligations of the company, as expressed by its president, toward its patrons. We appreciate that a utility must pay its indebtedness if the stockholders desire to remain in control of the properties. The stockholder and not the ratepayer authorized the creation of the indebtedness and he

1932	483,094.12	74	2.04	19.4	1,695	7.39
1933	474,124.23	72	2.08	20.1	1,664	7.98
1934	473,671.33	72	2.16	20.9	1,657	7.97
1935	424,710.27	65	1.94	20.0	1,554	7.20
1936	482,469.19	73	2.37	22.3	1,793	8.15
1937	451,172.76	69	2.31	21.4	1,695	7.55
1938	430,533.07	66	2.41	22.4	1,621	7.71
1939	349,941.90	53	2.17	20.5	1,376	6.64
1940	329,429.54*	50	2.38	22.5	1,307	6.50
1941	245,657.54*	37	2.05	19.2	1,051	4.98
1942	243,099.18*	37	2.06	18.9	1,107	4.36

* Includes minor amounts for motor coach operations in Account 24-1, Car-houses, as follows:

1940	\$1,759
1941	2,832
1942	1,332

† Rail and trolley coach.

is primarily responsible for its payment. Money allowed in rate proceedings for operating expenses should not be devoted to the payment of indebtedness. The company cannot expect, and this Commission has never held, that the ratepayers, in addition to paying for the cost of service, must provide the money to pay indebtedness. In our opinion, the first obligation of the company is to use its income to pay the cost of a reasonable, adequate and satisfactory service to the public. Necessary and legitimate operating costs have priority over all other expenditures. If the stockholders are unable, or, because of past losses; unwilling to advance funds to the company to pay its indebtedness, they should turn the properties over to the company's creditors. An analysis of the company's finances shows that over a period of years the company has used funds urgently required for proper maintenance, and for the replacement of depreciated property, for the payment of indebtedness.

The City of San Francisco, through Mr. Vensano, Director of the Department of Public Works, introduced Exhibit 7¹² containing a study and analyses of the obligations of the company in so far as they relate to the physical conditions of the streets occupied by the Market Street Railway. This exhibit indicates that the company's total obligations for bringing *street paving* into proper condition, as required by franchise obligations, amount to \$1,691,162.76. Mr. Vensano testified that this amount does not include any track reconstruction, except the minimum cost of raising the rail to a uniform grade line where that is necessary and, further, that this deferred paving maintenance has accumulated over many years.

The company's *streetcar rolling stock* is obsolete and 73 [fol. 237] electric cars and 12 cable cars were out of service on May 1, 1943. Of the total number of 440 streetcars and 39 cable cars classed as operative by the company on May 1, 1943, the latest purchases were made in 1935 and 1936. In those years several second-hand one-man cars were ac-

¹² Exhibit 7 is entitled "Report of the Obligations as to the Use of Streets and Condition of Streets Used by the Market Street Railway Company (In Accordance with Ordinance 1892 (Series of 1939) Passed by the Board of Supervisors and Approved December 15, 1942)," dated June 30, 1943.

quired, which are now classed as "out of service." The balance of the operative streetcar equipment was built in the period from 1903 to 1933.¹³ The 39 operative cable cars (12 of which are shown as "out of service") appear to have been built, or rebuilt, according to Exhibit 3, in the period from 1893 to 1907. A total number of 123 motor coaches were in service on May 1, 1943, all except one of which were purchased in the period from 1937 to 1942 (49 of these coaches are 1941 and 1942 models). It will be noted that more than two thirds of the electric streetcars in service are 20 or more years old and that no streetcars have been purchased by the company since 1936. In that period great progress has been made in modernizing and increasing the operating efficiency of electric streetcars. The company has not participated in this progress.

Mr. Hall testified that there is considerable deferred maintenance on streetcars now in active service.

Referring to the *idle equipment* owned by the company and which, because of the alleged manpower shortage, cannot be put into service on the company's lines, it developed that the Municipal Railway through the city's Public Utilities Commission, has offered to lease from the company as many cars as can be spared, such cars to be operated on [fol. 238] the Municipal lines.¹⁴ The company has declined

¹³ Exhibit 3 shows the age of streetcars as follows:

Number of Electric Streetcars	Built in	Remarks
18	1903	Rebuilt in 1922
9	1907	
144	1911	Two of these "out of service"
20	1913	
2	1918	Bought second-hand in 1935; now classed as "out of service"
148	1923-1930	59 shown as "out of service"
20	1924-1925	
10	1927	Bought second-hand in 1935; all 10 shown as "out of service"
69	1931-1933	

The company also operates 9 electric trolley coaches purchased in 1935 and 1936.

¹⁴ From letter of Public Utilities Commission of San Francisco to Office of Defense Transportation, San Francisco: "The Public Utilities Commission of San Francisco also desires to lease on a rental basis as many of the Market Street Railway Cars as that Railway can spare, these cars to be used anywhere on the Municipal Railway that the Public Utilities Commission thinks fit."

to make any such lease. Mr. Cahill, manager of the Public Utilities of San Francisco, testified that the city has been refused priorities for the purchase of motor coaches time after time, by the Office of Defense Transportation in Washington, D. C., for the reason "that we are not utilizing here in San Francisco all the rolling stock which exists; that is true as to streetcars only". The Municipal Railway, Mr. Cahill testified, does not store and has not available any idle streetcar equipment.

No satisfactory reason has been given the Commission why the large number of idle streetcars owned and classed as operative by the company is not put to much needed use during this critical war period. The excuse of manpower shortage is not convincing. If the Market Street Railway cannot use these cars, the Municipal Railway apparently can and has declared its willingness to pay a fair rental. Such rental payment would increase the company's net revenue and, what is more important, would provide urgently needed additional transportation for the people of San Francisco. We are compelled to conclude that the primary, if not the only, reason why no use is being made of this equipment is found in the competitive situation and because some traffic might be diverted from the Market Street lines to the Municipal lines, although there is nothing in the record indicating that such diversion would occur.

Manpower Shortage

The matter of manpower shortage occupies an important place in this proceeding. Mr. Kahn said: "Generally speaking our difficulty at this time is not one of equipment; it is one of manpower * * *". We are aware that manpower shortage is now a nation-wide difficulty, aggravated [fol. 239] on the Pacific Coast, and not confined to this company or to transportation companies and other utilities. We note, however, a marked difference in the manpower situation as between different operators and utilities and in its effect on the essential public service rendered by such different operators. These differences compel the conclusion that company and management policies affecting employee relations, wages and salaries, working conditions and attitude toward the public in general have a large effect on manpower shortage. The more enlightened and liberal such policies have been in the past, and the more sincerely

they are continued in actual performance during this period of crisis, the more readily the manpower problem can be dealt with, to the advantage of the war effort, the public service, and the utility.

Careful studies into this subject were made by our staff and by the company and exhibits 10, 11, 17 and 26 deal wholly or partly with this matter. This evidence may be summarized. In April 1943 the platform men shortage, measured against the force required for scheduled services, was 18 per cent on the company's operations; on the Municipal Railway the shortage was 9 per cent; on the Los Angeles Railway 13 per cent. By June of this year Market Street's shortage had increased to 22 per cent, while Municipal's had dropped to 6 per cent. The company sustained a net loss (reflecting all labor turnover) of 13 platform employees in the 14 months ending June 1943, while Municipal gained 143 such employees. It is obvious that these figures, by themselves, account for a large part of the difference between the relatively poor service of Market Street Railway and the relatively good service of the Municipal system.

The record indicates the reasons for the much more severe manpower situation on the company's lines compared with Municipal's. The causes are found partly in the somewhat higher wages paid Municipal employees, the fact that they have a large measure of employment security [fol. 240] through Civil Service, they receive sick benefits, the working conditions are generally better than on the company's operations, and the equipment and plant they operate are better and safer.

Mr. Newton, the company's vice president, testified that the company's working conditions are in some respects more favorable than Municipal's. Company employees work under Union agreement, have the "check off", receive pay for waiting time, and enjoy low-cost medical protection. These advantages are not sufficient, apparently, to overcome the company's pronounced manpower shortage. To our inquiry as to what is being done and what might be done to mitigate the men and women shortage, the company, among other things, urged the suspension of the San Francisco one-man car ordinance for the duration, with the proviso that proper care would be exercised in selecting the lines suitable for one-man operation. Mr. Kalin testified that such suspension would relieve the company's platform labor shortage to a great extent. In view of the de-

termination of this issue by the City's electorate and by the courts we see no prospect of relief through this means in the direction of better transportation service for the City of San Francisco.

No complaint can be made in regard to the company's service to establishments directly serving the war effort, such as shipyards and other war industries, and to Army and Navy concentration points. A letter of commendation from the Office of Defense Transportation is in evidence. Lieut. Commander Jenkins, U. S. N. R., Domestic Transportation Officer, 12th Naval District, (former transportation research engineer of this Commission) testified that the company's service to Naval establishments has been satisfactory and that there has been cooperation with Navy headquarters. He stated that the Navy's transportation service requirements will greatly increase in the near future.

• We wish to put on record our conviction that all service requirements in furtherance of the war effort must have primary consideration of this company, as of all other utilities under our jurisdiction. Within the limits of our authority we are making, and shall continue to make, every effort to cooperate with the Army and Navy and with the appropriate federal agencies towards that end.

As to the character and condition of the present service generally Mr. Hunter, chief engineer of the Transportation Department, testified as follows:

"I next refer to the matter of the value of the service. Although this study and investigation does not analyze the rate situation I do not think we can entirely close our eyes to the value of the service. Obviously, they should be in balance as near as can be at all times and with the service getting worse, I will say on the Market Street, or at a low stage there is no question but what the passengers are getting less for their money today than they were when they got better transportation. But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service. If you desire to go from the station to your office up town, 3rd and Townsend, say, the public is willing to stand, but they would like an opportunity to get any kind of service. But, nevertheless, they are

getting less for their money, much less than in normal times, and I think we have to think of that." (15)

[fol. 242] The inseparable *relationship between rates and service* and the interdependence of the character and quality of utility service on the one hand and the level of the rates on the other hand have long been recognized by regu-

(15) "Commissioner Sachse: On the question of service, Mr. Hunter, in your opinion, is the service now rendered by Market Street Railway in San Francisco worse or of approximately the same quality and character of service as it was during the 5-cent fare era prior to the war emergency?

"A. I think the service is worse now.

"Q. In your opinion should the cost of the service that the public is to pay, must pay, have some relation to the quality of service that is rendered, in so far as the public is helpless, beyond its control to get better service for the same amount of money that they pay? A. Yes, that is covered in my recommendation No. 6.

"Q. Will you enlarge a little bit on that? That No. 6, reads as follows: 'The value of the service should be in keeping with the rates.'

"And I would like to have you keep in mind my thought on that so that you can give your answer with that in mind. Assuming that it is beyond the control of the Company to give as good service as it did some time ago do you think that, even under those circumstances, the public should pay the same or more than they formerly paid for a superior quality of goods of service, other things being equal?

"A. I think the service should go along with the rates.

"Commissioner Havenner: Do you mean by that when the standard of service decreases rates should be commensurately decreased, if that can be calculated? A. Of course, the service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one. But, obviously, as the service declines that should be recognized in establishing any rate, but to determine just what a rate should be on a particular service, you could not do it without considering all the other elements that go in. There are many."

lating commissions and by the courts. This Commission in Decision No. 2483 (1915), *W. J. Rogers, et al., vs. Sacramento Valley West Side Canal Company, et al.*, (7 CRC 145) said:

"Another element which must be taken into account in establishing the rates in this case is the ability of of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. *The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public.* (Emphasis supplied).

"In *Covington & L. Turnpike Road Co. vs. Sanford*, 164 U. S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates to be charged by the Covington & Lexington Turnpike Road, as established by the General Assembly of Kentucky. At page 596, Justice Harlan says:

[fol. 243] 'The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.'

"Again, on the same page:"

'If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public.'

"In the leading case of *Smythe vs. Ames*, 169 U. S. 464, the same learned justice, at page 574, says:

'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.'

"These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher

than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay."

In the case referred to the water company sought rehearing, contending that rates should be established which would yield operating and maintenance expenses, depreciation allowance, and a full return on fair value. In denying rehearing the Commission stated in part as follows: (8 C. R. C. 279)

"While it is true that a rate fixing authority must consider all the matter to which petitioners refer, petitioners overlook another principle which is equally well established, namely, that the public is entitled to demand that no more be exacted from it for a public service than the service rendered is reasonably worth. In other words, a rate fixing authority can not look solely to the position of the utility. It must look also to the position of the present and prospective consumers of the utility. See *Covington and L. Turnpike Road Co. vs. Sanford*, 164 U. S. 578, and *Smythe vs. Ames*, 169 U. S. 464, 547."

In *Lake Hemet Water Co.*, (11 C. R. C. 617, 638) this Commission says:

"Petitioner's refusal to claim rates high enough to yield a return on the estimated reproduction cost new of its property or any return on so-called intangible items over and above the value of physical property is based on a frank recognition of the well-established rule in public utility regulation that while rates must be reasonable to the utility they must, in any event, be [fol. 244] reasonable to the public. The cases clearly establish the principle that the rates charged by a public utility must in no event be higher than the service is reasonably worth to the consumer." Citing *Covington & L. Turnpike Road Co. v. Sanford*, 164 U. S. 578; 596; *Smythe v. Ames*, 169 U. S. 464, 547; *San Diego L. & T. Co. v. Jasper*, 189 U. S. 439, 446; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 52; *Minnesota Rate Case*, 230 U. S. 352, 454.

The Hemet decision then continues as follows:

"The rates established may not be unjust from the point of view of the consumer. When it has been determined that rates beyond a certain amount would be unfair to the consumer, the value of the property for rate making can not be greater than the value which, at rates of interest sufficient to bring capital into the business, will yield the revenue resulting from the rates established. This value may be very far indeed from the estimated cost of reproducing the property new. *Sacramento Valley Realty Company v. Sacramento Valley West Side Canal Company* (7 C. R. C. 113)."

In Decision No. 12761, *Coast Valleys G. & E. Co.*, (24 C. R. C. 53) this Commission said:

"The question of whether given rates are or are not reasonable depends as much upon the character of service supplied as upon the price which the consumer must pay for it. When service supplied by a utility is all that it should be, the conditions under which that service is extended to the community are liberal and the rates charged are found to produce more than a reasonable income, those rates should clearly be reduced.

"On the other hand if the service to the community in the broad sense is capable of distinct improvement, it would seem more desirable to reduce any excessive net revenue by increasing the quality of service rather than by decreasing the price paid for it.

The Coast Valleys decision then states as follows:

"In the present case, the company appears to be making every effort to give good service that is consistent with its financial ability. We believe, however, that the service is capable of improvement and should be extended to new consumers and to unserved portions of the territory covered under a much more liberal policy than that now followed. The schedule of rates embodied in the order accompanying this opinion will, therefore, not result in the extreme reduction which might be justified, but the company will be expected

to continue the improvement of its system and to initiate a more liberal policy in the construction of line extensions."

All standard reference books on public utilities and commission regulation make note of the necessary relation between [fol. 245] service and rates.¹⁶

The legal basis for the rule that fair and reasonable rates and fair and reasonable service must go hand in hand, and that conditions affecting one must affect the other, is well stated in the book referred to in the footnote below.¹⁷

¹⁶ From *Public Utility Economics* by Thompson and Smith, New York (1941), page 257;

"A review of the common law duties of public service companies discloses that historically the significant problems were two—rates and service, with the major emphasis on service. The years of regulatory effort in the United States have reversed this emphasis, at least from a publicity viewpoint. Today a phase of the rate problem—valuation—stands out in the public eye as the number one problem of regulation. This reversal is to be accounted for by the unsettled state of the valuation question. The public hears much about the 'breakdown of commission regulation' because of the impasse on that problem. One hears but little, however, about that other original primary problem—adequate service—because there is nothing spectacular, nothing controversial, about it. The utilities, on the whole, have had quite far-sighted leadership, insisting on service standards at least as high as those imposed by the commissions. Controversial or prosaic, service requirements are as important as rates; in fact, the reasonableness of rates should never be considered apart from the adequacy of the service in question."

¹⁷ From *Elements of Utility Rate Determination* by Bryant and Herrman, New York (1940), page 219:

"What is a proper rate of return in one case, in one locality, or at one period of time, may not be the proper amount at some future date (Waukesha Gas & E. Co. v. Wisconsin R. Comm. 181 Wis., 281, 194 N. W. 846, P. U. R. 1923E, 634: see also 203 Fed. 864) or in some other place. What the public requires is a solvent utility (Quinn v. Harrisburg R. Co., Pa., P. U. R. 1920C, 106) operating in an

Summarizing the record in the matter of service, we conclude [fol. 246] that measured by normal standards the company's service to the public was unsatisfactory and inadequate before the war and is at this time unreasonably bad. Making full allowance for wartime difficulties, the record shows, and we so find, that the company's service could have been, and can now be, materially improved and that the company has not taken proper advantage of available means for betterment. In comparison with Municipal

efficient manner, (Re Lexington Water Co., Va., P. U. R. 1928E, 323) provided that the rates are not more than the service is reasonably worth. The law does not guarantee a profit from the undertaking at all times nor in all localities. (Kings County L. Co. v. Lewis, 110 Misc. 204, 180 N. Y. Supp. 570, P. U. R. 1920D, 145; Smith v. Illinois Bell Tel. Co., 282 U. S. 133, 75 L. ed. 265, 51 Sup. Ct. 65, P. U. R. 1931A, 1). Competition from other forms of service may reduce the income of a utility and make future operation at a profit impossible. The full return on the fair value of the property is predicated on efficient operation. (Re Lexington Water Co., Va., P. U. R. 1928E, 323,)"

Further, page 222:

"Efficient management of a utility produces the service at lower operating costs than does poor management. Good service stimulates greater use by the customers. Both these elements should be considered in fixing the rate of return that should be allowed a utility."

Further pages 224 and 225:

"The value of the service rendered has been mentioned as one of the elements to be considered in *Smyth v. Ames*, in which the court said that the railroad could not charge more than the service was worth to the public. . . .

"There is no rule at law by which the value of the service may be measured; but it has been stated that the value of the service is considered to be more important than the return to the utility. (Re Helena L. & R. Co., Mont., P. U. R. 1920D, 668; Re Pocatello Gas & P. Co., Idaho, P. U. R. 1923C, 25; Re Alabama Util. Co., Ala., P. U. R. 1932A, 435; Gay v. Damarascotta-Newcastle Water Co., 131 Me. 204, 162 Atl. 264, P. U. R. 1932E, 289.)"

pal's performance, the company's service is distinctly inferior. All indications point to increased mass transportation service requirements, military and public, in San Francisco, with no relief in sight through the company's facilities, operating program, or management.

Traffic, Revenues, Expenses, and Effect of Fare Change

For a period of seventeen years, until the beginning of the war boom in 1942, the company was faced with steadily diminishing operating revenues. The maximum revenue year was 1925 (\$9,902,768), the minimum year was 1941 (\$6,062,674), a decline of 39 per cent. In 1942 the operating revenue was \$7,574,541, an increase due to the war of \$1,511,867, or 25 per cent over the previous year, and for the 12-month period ended May 31, 1943, there was a further increase from the same cause, to \$8,321,000. The largest factors in this loss of revenue prior to the rate increases in 1937-1938 were the competition of the private automobile and the Municipal Railway.

The financial results of the company's operations for the past 21 years and the disposition of total operating revenue [fol. 247] are shown in the following table from Exhibit 10

Year.	Gross Maintenance Expense	Gross Operating Expense	Total Operating Expense†	Operating Taxes	Depreciation	Operating Income	Total Revenue
1922.....	\$1,268,361	\$5,591,207	\$6,860,038	\$604,200	\$320,000	\$1,799,199	\$9,583,437
1923.....	1,298,211	5,535,977	6,834,188	617,100	320,000	2,038,105	9,809,393
1924.....	1,369,923	5,666,285	7,036,208	617,000	320,000	1,879,152	9,852,360
1925.....	1,371,886	5,681,144	7,053,040	617,000	500,000	1,732,728	9,902,768
1926.....	1,416,911	5,976,794	7,393,705	617,000	500,000	1,380,962	9,891,667
1927.....	1,418,351	6,222,367	7,640,858	605,000	500,000	1,073,712	9,819,570
1928.....	1,351,262	6,395,351	7,746,613	607,000	500,000	900,848	9,754,461
1929.....	1,214,684	6,265,754	7,469,477	595,000	500,000	1,025,716	9,590,193
1930.....	1,141,413	6,148,323	7,286,745	556,000	500,000	853,595	9,196,340
1931.....	1,034,810	5,855,759	6,863,606	448,500	500,000	757,216	8,569,322
1932.....	1,007,387	5,538,568	6,535,294	399,000	262,531	608,682	7,805,507
1933.....	946,588	4,997,303	5,939,749	382,000	498,271	587,396	7,407,416
1934.....	935,936	4,864,444	5,941,869	416,000	361,467	553,525	7,272,861
1935.....	937,323	5,048,837	5,902,446	328,009	500,000	593,500	7,323,955
1936.....	926,131	5,004,843	5,918,367	306,500	500,000	783,486	7,508,353
1937.....	955,484	5,024,861	5,972,177	402,000	500,000	305,577	7,179,754
1938.....	880,772	4,706,342	5,582,736	432,000	500,000	40,234	6,474,502
1939.....	711,244	4,564,636	5,273,237	424,000	500,000	239,079	6,436,316
1940.....	714,997	4,353,898	5,065,439	416,000	500,000	87,185	6,068,624
1941.....	667,614	4,276,644	4,936,329	416,000	500,000	210,345	6,062,674
1942.....	752,034	4,834,932	5,579,127	425,500	500,000	1,069,914	7,574,541
2 Mo. Ended April 1943....	841,335	5,171,527	6,007,028	422,500	500,000	1,281,786	8,211,314

† Reflects credits for Transportation for Investment and, in 1934 and 1935, additional wages under profit-sharing plan.

• Red figures.

[fol. 248] Exhibits 1 and 10 show that miles of road operated (single track miles) were reduced from approximately 290 miles in 1922 to 220 miles at the end of 1942, a 24 per cent reduction. Offsetting the reduction in rail track mileage, to a certain extent, was the increase in bus route mileage, which at the beginning of 1938 was about 12 miles and in 1942 approximately 90 miles. Revenue car miles (including bus miles) were, in round numbers, 25 million in 1922 and 17,339,000 in 1942, a decrease of 31 per cent. The lowest point in revenue car miles was reached in 1939 (16,814,000) and then they fluctuated in the three following years as follows: 1940, 17,044,000; 1941, 16,854,000; 1942, 17,339,000. Total passengers carried in 1922 were approximately 255 millions and in 1942 155,710,000, a reduction of 39 per cent. The lowest number of passengers carried is shown in 1940 (124,777,000). In the following two years there was an increase (1941, 126,241,000 and 1942, 155,710,000). It is interesting to note in this connection that in 1934 the total number of passengers carried was 205 million and for the following two years there was an increase, in 1935 to 207 million and in 1936 to about 215 million. In 1937 and in 1938 the rate increases heretofore referred to became effective and a precipitous drop in revenue passengers and total passengers occurred subsequent to such increases. The figures for the years 1937, 1938, 1939 and 1940 are as follows:

Year	Revenue Passengers*	Total Passengers Carried
1937	141,972,000	188,000,000
1938	111,787,000	144,439,000
1939	95,563,000	129,582,000
1940	89,924,000	124,777,000

* Excluding revenue transfer passengers.

[fol. 249] The over-all effect of the Market Street fare increase on the San Francisco local transportation agencies was summarized by Mr. Hunter, who testified that during the five-cent fare period 1933 to 1936 Market Street carried 71 per cent and Municipal 29 per cent of the combined traffic and the revenue followed approximately the same divisions. During the three years 1939 to 1941, inclusive, with

the company's fare at seven cents and the Municipal at five cents, the Market Street Railway carried only approximately 52 per cent of the combined fare passengers and received about 60 per cent of the combined passenger revenue.

It is apparent, however, that a considerable portion of passengers lost to Market Street, by reason of the fare increases, did not subsequently make use of Municipal Railway. This is indicated in Exhibit 1, which shows that the combined traffic of Market Street Railway plus Municipal Railway did not equal the sum of the two separate revenue passenger figures prior to the rate increases. The reasons for this discrepancy seem obvious: a large percentage of lost Market Street revenue passengers consisted of so-called short-haul riders who refused to pay the seven cent fare and who were unable to go to the Municipal system by reason of nonavailability of that system in many parts of the city. Mr. Kahn is in agreement with this view.¹⁸ [fol. 250] Not even the increased activity resulting from the Golden Gate International Exposition in 1939 and 1940 was able to overcome the continuous decline in passenger revenue on the company's lines. There is no doubt that the loss of short-haul passengers has continued and will continue on Market Street Railway lines during the present war period.

The entire evidence on this item compels the important conclusion that the company will reap no lasting financial benefit from rates in excess of the five-cent fare. For the prewar period this conclusion admits of no doubt whatever. The loss in revenue through loss of patronage was much

¹⁸ "Mr. Appel: When the Market Street Railway Company lost riders in 1938 and 1939 did the Municipal Railway absorb all of those riders? A. No, nor was it anticipated that it would absorb all the riders because a careful analysis was made at that time and on lines of Municipal Railway that paralleled those of Market Street Railway. It was anticipated that a certain percentage of the riders would shift from Market Street Railway to Municipal Railway, but on other parts of the system which were non-competitive, such a shift of revenue passengers due to the increased fare was not anticipated at all.

"Q. Nor did it take place? A. No."

greater than the gain from the increased fare. In the war period Market Street has gained, as have all transportation systems throughout the country, a large increase in passengers and revenue. This has come about by reason of the rubber shortage, gasoline rationing and the discontinued use of an increasing number of automobiles, together with the enormously increased industrial and military activities. In San Francisco these causes have had very pronounced impact on the local transportation system and have brought about a great increase in traffic. The demand, this record shows, greatly exceeds the supply, especially during rush hours. This situation will not last. As soon as transportation conditions return to normal the company's seven-cent fare will again be hopelessly handicapped, as it was before the war, against the competing five-cent Municipal fare and the company's financial showing under present conditions of service will be no better than it was in 1941 and 1942. It will grow worse unless the service is greatly improved.

Position of City of San Francisco

The position of the City and County of San Francisco was stated by Angelo J. Rossi, Mayor of San Francisco, and by Edward G. Cahill, manager of the Public Utilities of [fol. 251] San Francisco. Mayor Rossi testified that in his opinion "the transportation problem of San Francisco will never be solved until we have a unified system, one fare and one ownership" and further "I am still of the opinion that the only way to do it would be to devise some plan, self-liquidating plan, where the city would eventually own the property of the Market Street Railway Company." The Mayor reviewed the attempts made, in the elections heretofore referred to, to have the people of San Francisco vote bonds to acquire this street railway property. He testified that the Municipal system operating under a five-cent fare showed "a profit now of over a million dollars a year" and that the city had accumulated a good surplus and was willing "to spend that money for equipment if and when the Federal Government will permit us to."

Mr. Cahill testified that the San Francisco Public Utilities Commission strongly advocates a uniform five-cent fare and free universal transfer. He opposed a charge for a transfer between the privately owned and the Municipal systems

and testified that such transfer would not be worth as much as one cent.

Our Department of Finance and Accounts introduced evidence showing Comparative Balance Sheet, Profit and Loss Account, Comparative Income Statement, Operating Revenues and Operating Expenses for the five years 1938 to 1942, inclusive; all taken from the company's sworn annual reports filed with the Commission and from the company's records. Reference has heretofore been made to the earnings of the company during the past twenty years. The record is clear that prior to the war the five-cent fare produced a greater gross and net annual revenue than any fare in excess of five cents.

What increase in traffic a five-cent fare would bring at the present time is not certain, but there is no doubt that it would be substantial particularly at the off-peak periods [fol. 252] and also for the reason that a large number of lost short-haul riders would return to the company's lines. In the eight months' period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775, compared with \$4,737,856 for the same period in 1942, an increase of twenty per cent. On this basis the total for the full year of 1943 under a seven-cent fare may be expected to be about \$8,700,000. If operating expenses increased to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes, the net operating revenues would be \$760,000, which is a return of 9.6% on \$7,950,000,¹⁹

¹⁹ The only available indication in this record of the present value of the company's properties used and useful in the public service is the resolution of its Board of Directors, passed on March 25, 1943. The resolution (Exhibit 9) reads as follows:

"Sale of the Operative Properties of the Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he had agreed with the Mayor and other city officials, as well as the Board of Supervisors, to sell the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such

the price at which the company offered to sell its properties to San Francisco in 1942 and again in 1943. If a depreciation allowance is made of \$500,000, as set up by the company in previous years, the net operating revenues would be \$1,010,000, or a return of 12.7% on said \$7,950,000. Both of these rates are excessive and unjustified by the present service.

We express no opinion on the reasonableness of the fig-

sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20, 1943. The President also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

"Whereupon, On motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted:

"Resolved, That the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further Resolved, That the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

ure of \$7,950,000 as an exact measure of the present fair value of the company's operative property in its present depreciated physical and service condition, with its past earning record and its prospective future under the competitive transportation situation obtaining in San Francisco. We accept the figure as the amount for which the company was willing to sell to the city of San Francisco. Here is an offer by a willing seller, first made in September 1942 and rejected in an election by an unwilling buyer, the voters of the City and County of San Francisco. The same offer was again made six months later by the same willing seller and was again rejected by the same unwilling buyer.

The legal test of "present fair market value" assumes a willing seller and a willing buyer. This legal assumption holds, as in utility condemnation cases, even if the seller is unwilling to sell. Here the prospective buyer has repeatedly expressed his unwillingness to buy. It may be taken for granted, therefore, that the price set by the seller is not too low. Nor can it be said that the potential buyer was not fully informed of all the essential facts and circumstances relating to this property. In the last, as in the previous elections the matter had been fully and forcefully presented to the people of San Francisco. The last two offers, it should be noted, were made at a time of abnormally high war traffic and revenue and reflected the temporarily high earning capacity of the company under the present fare.

[fol. 254] The fixing of a five-cent fare on a twelve months' basis, without any allowance whatever for increased traffic, and including in operating expenses \$500,000 for depreciation, would result in a deficit of about \$1,153,000. On the basis of the record the indications are that with a five-cent fare a 25% to 30% increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5% return on the \$7,950,000 base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view

of the certain increase of direct and indirect war activities in this area.

Considering the entire record in this case, we conclude that the continued charge of the seven-cent fare on the lines of the Market Street Railway Company is not justified by either the present service or the past service since the granting of the rate increases by this Commission in 1937 and 1938, and produces an excessive rate of return. Not only has there been no betterment in the unsatisfactory service conditions existing at the time of the rate increases, and which these increases were intended to remedy, but the condition of track and equipment and the character and quality of the service furnished the company's customers have grown progressively worse, until in 1941, 1942, and in this year the standard of service has reached the lowest point in the company's history. The war, it is true, has aggravated this condition, but the record is clear that the service was unquestionably poor and inadequate before the war. It was and is poorer and less adequate than the competing Municipal service rendered the public at a five-cent [fol. 255] fare. The two-cent increase in Market Street fares, it has been shown, did not, before the war improve the company's earning position and will again produce a loss under more normal transportation conditions. Gross and net earnings prior to 1942 fell to the lowest point in more than 20 years and the loss in revenue passengers heavily outweighed the increase in the fare. The company, prior to the war, would have been financially much better off under the continued five-cent fare.

The record clearly indicates that the number of revenue passengers will be substantially greater with a lower fare than with the present seven-cent rate. In the prewar period we may safely assume that this number, with a continued five-cent fare, would have been about as large, taking into account abandoned lines and expansion of Municipal operations, as it was prior to the rate increases in July 1937. The fare increases in 1937-1938 were gradual and experimental. We think a decrease at this time should also be gradual and must of necessity be experimental. We shall, at this time, reduce the Market Street Railway Company fare by only one cent and fix a six-cent cash fare as an interim rate. Consideration of service alone and of the value of such service to the patron would justify the fixing of a five-cent fare.

We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions.

[fol. 256] We find that a six-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate, provided, however, that every possible and reasonable effort will promptly be made by the company to furnish an improved service. We shall expect the company to file, in the form designated by us, monthly reports showing service and traffic conditions, and the financial results of operation.

This proceeding will be kept open for such further investigation and such further order or orders as may be necessary and just and reasonable.

We adopt the following order.

Order

The Commission having instituted an investigation on its own motion into the reasonableness of the rates, practices, and service of the Market Street Railway Company, public hearings having been held, the Commission being apprised of the facts, and the matter being under submission and ready for decision, and based upon the foregoing opinion;

It Is Ordered that Market Street Railway Company is hereby directed and authorized to file, on the effective date of this order, and to make effective upon one (1) day's notice to the Commission and to the public, the following change in its fare structure for the transportation of passengers between points on its system in San Francisco:

Base cash fare, or token fare, changed from seven (7) cents to six (6) cents;

Other present fares to remain in effect, including the established free transfer privileges between the various

lines of this carrier as well as the established transfer arrangement between Market Street Railway Company and both the lines of San Francisco Municipal Railway and the California Street Cable Railroad Company.

[fol. 257] It Is Further Ordered That Market Street Railway Company shall file with this Commission, in addition to the information required by General Order No. 65,

(1) a monthly statement showing the traffic carried, segregated as to the different classes of fare;

(2) a monthly statement, in the form approved by the Commission, showing changes in service and in manpower conditions.

The information referred to in (1) and (2) shall be filed with the Commission not later than twenty (20) days following the termination of the month of operation.

It Is Further Ordered that this proceeding shall remain open for further investigation by the Commission.

It Is Further Ordered that the Commission reserves the right to make such further order or orders in this proceeding as to it may seem right and proper.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 30th day of November, 1943.

Franck R. Havenner, Richard Sachse, Frank W. Clark, Commissioners.

Certified as a true copy.

H. Mathewson, Secretary, Railroad Commission of the State of California

[fol. 258] Concurring Opinion

I concur in the opinion of my fellow commissioners and am in accord with the Commission's order in this proceeding. There is found in this record, however, much testimony not mentioned in the preceding decision and of importance in support of the Commission's order and I think reference should be made to some of this testimony.

The decision emphasizes, rightly I believe, the well-established economic and legal principle that the rate to

be paid by the public for a utility service must bear a reasonable relationship to the value, quality and character of such service. In this case we are considering the value of street railway service not from a theoretical viewpoint but in the light of the actual transportation conditions as we find them in San Francisco at the present time and as they have existed for a number of years. The service of the Municipal Railway permits of a direct comparison with Market Street Railway service. The steady decline in the adequacy and quality of the company's service during the last ten years, and the fact that the rate increases granted by this Commission in 1937 and 1938 did not correct that decline, is amply substantiated in this record. The war has forced the acceptance by the car riders of still poorer and more inadequate service, while the company is profiting from the abnormal increase in traffic and congestion by high net revenue and unreasonably high rate of return.

These facts as they are set forth in the preceding opinion sufficiently support the Commission's order. The courts have generally required, however, in addition to the test of the value of the service to the rate payer, a second test of the reasonableness of a public utility rate; viz, the reasonableness from the standpoint of the utility. The Commission may not fix a rate resulting in confiscation of the company's property used and useful in the public service. This test requires a consideration of past and present revenues and expenses, of investment and rate base, of rate of return and an intelligent consideration of [fol. 259] these items in the probable near future. Further, we must not ignore any other important and relevant fact having a bearing on the reasonableness of the rate both to the utility and the rate payer. All of these requirements are understood of course, and recognized by the Commission. The preceding opinion refers only briefly to these items, although the record is by no means silent on the requirements of this second test of a just and fair utility rate.

Earnings

The record shows that the company's net earnings after proper operating expenses, including depreciation and taxes, have at no time during the five years 1937 to 1941,

inclusive, produced sufficient income to meet fully the company's fixed charges. This is apparent from Exhibit 1, where the column "Deductions from Gross Income" indicates payments for interest on funded and unfunded debt, amortization of discount on funded debt and certain small items of miscellaneous debits. The figures for the five-year period taken from the exhibit are as follows:

Year	(a) Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Taxes	Operating Income	Non- Operating Income (Net)	Gross Income	Deductions from Gross Income	Net Income
1937	\$7,179,754	\$5,972,177	\$500,000	\$402,000	\$305,577	\$10,588	\$316,165	\$484,115	\$167,950*
1938	6,474,502	5,582,736	500,000	432,000	40,234*	10,840	29,394*	466,431	495,825*
1939	6,436,316	5,273,237	500,000	424,000	239,079	6,979	246,058	451,008	204,950*
1940	6,068,624	5,065,439	500,000	416,000	87,185	5,720	92,905	358,715	265,810*
1941	6,062,674	4,936,329	500,000	416,000	210,345	8,267	218,612	333,422	114,810*

(a) Consisting of Passenger Revenue and Other Revenue.

* Red figures.

[fol. 260] This unsatisfactory earning condition, including the period during which the 40 per cent rate increase from 5 to 7 cents granted by the Commission was in effect, was in fact worse than shown in the preceding tabulation. This is true for the reason that the company throughout its entire history has made inadequate provision for depreciation of its operative property. Further, such insufficient and arbitrary depreciation appropriations as have been made from year to year since 1921 have in part been expended not for the necessary replacements of fully depreciated plant and equipment but in payment of interest and for other purposes not related to maintenance of service and renewal of plant. The cost of depreciation is an operating expense and is allowed for specific replacement purposes.

Witness Mors, the Commission's transportation research engineer, in Exhibit 10 states, in part, as follows:

"The annual appropriations appear to have been decided upon arbitrarily and not based upon any depreciation study. For the first four years \$320,000 was added to the reserve each year, and since 1924 the appropriation has been \$500,000 per year, with the exception of three depression years, 1932, 1933 and 1934, when it varied from \$263,000 to \$498,000."

Exhibit 10 shows that the depreciation appropriations made by the company were insufficient and that if proper depreciation rates had been applied to the recent depreciable property, based upon a valuation made in 1920, a straight line annual depreciation accrual of approximately \$780,000 would be required. Witness Mors in Exhibit 10 says:

"Had adequate depreciation expense been charged against operations and credited to the depreciation reserve, the company would have shown a net operating loss each year for at least 5 years prior to 1942. If adequate provision is not made or cannot be made for current depreciation the inevitable result is that some of the capital investment is consumed."

A review of the record with reference to the company's earnings in relation to the service offered its customers establishes the important fact that no rate of fare, 5 cents or higher, would or could in prewar and normal times

property valuation, or rate base. The operations of the [fol. 261] company under the service conditions as they existed in the five years prior to 1941 produced an annual deficit each year and the deficit was greater in the years when the increased fares were charged than during the 5-cent fare period. Only an improved service, with more modern and economical plant and equipment, under reasonably efficient management, and in financially solvent ownership, could have brought about profitable operation under fair and reasonable rates. The same compelling economic forces will be operative in the future and no sound purpose is served by ignoring these realities.

Investment, Rate Base, Rate of Return

The road and equipment account of Market Street Railway is not segregated by primary accounts, as provided for in the Uniform System of Accounts for Electric Railways, but is carried in the books as the sum of two accounts, namely (1) Railroads, Properties, and Franchises, and (2) Additions and Betterments to Road and Equipment.

The company's general ledger shows the following amounts in these two accounts as of April 1, 1921:

Ac. 401—Railroads, Properties, and Franchises	\$46,775,296.95
Ac. 401—Additions and Betterments to Road and Equipment	75,973.96
Total Road and Equipment	\$46,851,270.91

Additions and betterments and retirements have been reported annually to the Commission by primary accounts. These are summarized in Table 6-1 of Exhibit 10, the additions by groups of property and the retirements in total.

The book amount of road and equipment as of December [fol. 262] 31, 1942, \$41,768,505, was 87 per cent of the amount in the peak year 1926.¹

¹ In response to a request by the Commission the company submitted with its 1941 and 1942 annual reports a segregation of road and equipment by primary accounts. In submitting this schedule in 1941 the company made the following statement in a letter to the Commission:

“As requested, we are enclosing as a supplement to our 1941 report, Schedule 211, Road and Equipment,

The Commission has never investigated the correctness or reasonableness of the company's book entries and to what extent they represent actual cash investment in present used and useful property, and to what extent predecessor book entries, valuation writeups and so-called intangibles are represented in the original 1921 entry. There is included in the December 31, 1942 total the sum of \$5,119,191.30 for "General and Miscellaneous," including \$847,953.20 Law Expenditure; \$3,133,405.47 Interest During Construction, and \$571,415.47 Miscellaneous.

The Commission's Department of Finance and Accounts (witness Donovan) introduced Exhibit 2, showing Comparative Balance Sheet, Profit and Loss Account, Comparative Income Statement, Operating Revenues and Operating Expenses for the five years 1938 to 1941, inclusive; taken from the company's annual reports filed with the Commission, and from company records. Below is reproduced the balance sheet, with primary asset and liability items, as of December 31, 1942:

[fol. 263] Assets and Other Debits

Road and Equipment	\$41,769,229.27
Sinking Funds	27,352.76
Investments	3.00
Current Assets	1,571,705.03
Unadjusted Debits	165,204.61
Reacquired Long Term Debt	25,000.00

Total Assets and Other Debits	\$43,558,494.67
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segregating this investment as between rail and motor coach properties.

"This schedule, for the first time, gives a breakdown of property values by primary accounts, which values have been obtained from a schedule prepared by Mr. A. R. Franklin in an income tax case some time ago. The motor coach values at December 31, 1940, with the exception of Account 530, represent the estimated value of our investment in our motor coach garage, formerly our Twenty-fourth Street Car House, the value being obtained from the Railroad Commission's valuation of 1920."

Liabilities and Other Credits

Capital Stock Outstanding	\$31,926,450.00
Long Term Debt	5,994,873.96
Current Liabilities	906,476.00
Unadjusted Credits Other Than Reserves	187,424.18
Reserves	1,274,500.31
Profit and Loss	3,268,770.22
Total Liabilities and Other Credits	\$43,558,494.67

In the liability item "Reserves" is included a depreciation reserve of \$1,023,886.71. Applying normal accounting methods and practices, this would indicate a depreciated investment in road and equipment of \$40,745,342. Obviously this figure has no relation whatever to the actual depreciated value of this company's operative property in its present condition.

The so-called investment figures, depreciated or undepreciated, have no bearing on property value, rate base or actual accrued depreciation, as such factors would be considered in a rate case or in the present proceeding. This is evident from a comparison of the balance sheet asset totals with the company's offer to sell its operative property to the City of San Francisco for \$7,950,000 cash.

A historical cost valuation was made by the Commission's engineering department as of June 30, 1920, upon the request of the city. It may be noted that this June 30, 1920 valuation compares with the April 1, 1921 company's investment figure as follows:

(1) Company figure: Investment, Road and Equipment, undepreciated, April 1, 1921	\$46,851,271
(2) Historical Cost Estimate, undepreciated, June 30, 1920	29,715,147
(3) Difference	\$17,136,124

[fol. 264] It is not practicable to bring these figures to reliable present amounts for purposes of this case. The accumulated depreciation in the property to 1943 would have to be ascertained and deducted from an undepreciated historical cost estimate, taking account also of retirements and additions and betterments and new capital expendi-

tures, in order to produce a present historical cost valuation estimate. This large task has not been undertaken and is not required and would be of no assistance, in my opinion, to reach a sound and fair decision in this case. A better measure of the maximum present value of the operative property is available and has been given consideration in the Commission's decision.

Nor is a reproduction cost estimate, undepreciated or depreciated, as of the present date required for the purposes of this case and if so large, costly and time-consuming task were undertaken the result would not assist the Commission in reaching a just and fair decision. This is apparent for several reasons: a reproduction cost estimate on any basis could only be speculative and theoretical, since under no conceivable circumstances would this property be reproduced in its present shape, including cable cars and other obsolete property, and in its present neglected and in adequate physical and service condition. Any attempt to estimate present day costs of duplicating the existing plant and equipment would run into absurdities and contradictions. Cable car systems are no longer constructed, nor could much of the existing electric rail equipment be purchased today. It is no longer produced and more modern, more efficient and economical street cars have been available for years. In no event would a number of the company's rail lines be rebuilt or reproduced since better and much more profitable motor coach service would in reality be substituted. There is the further consideration that during the war period no reproduction could in fact take place; construction materials and equipment cannot be purchased; construction labor is not to be had; present costs and prices for such reproduction and construction cannot be ascertained.

[fol. 265] The fact that the true present value of an obsolete street railway system cannot be found by a historical reproduction cost estimate, or by estimates of reproduction cost new, depreciated or undepreciated, or by review of original book cost, has been repeatedly demonstrated in proceedings before this Commission. The most recent such demonstration is the Sacramento street railway, where in Decision No. 36663, decided this month, the Commission approved the sale of this electric street railway and motor

coach property for \$450,000, when at the same time the undepreciated historical cost of this property was \$2,318-699.²

[fol. 266] If the offering price set by the company for its property is accepted as a measure of present value and as

² In Decision No. 36663, in Application No. 25794 of Pacific Gas and Electric Company to sell its electric street railway and motor bus transportation system in the City of Sacramento to Sacramento City Lines, the Commission says: "In Exhibit 3 filed at the hearing had on this application the undepreciated historical cost of the Sacramento street railway and motor bus line properties to be sold to Sacramento City Lines as of September 10, 1943, is reported at \$2,318,699. It is of record that this cost is predicated upon the company's 1919 historical appraisal and that to such appraisal has been added the net book cost of additions and betterments. Pacific Gas and Electric Company's books as of August 31, 1943 show against such properties a reserve for accrued depreciation of \$841,026. The company has agreed to sell the properties to the Sacramento City Lines for the sum of \$450,000 plus the assumption by Sacramento City Lines of Pacific Gas and Electric Company's contractual and other lawful obligations in connection with the ownership and operation of said properties, other than pending actions or subsequent torts or court action arising out of incidents that shall have occurred prior to the actual transfer of said properties to Sacramento City Lines and exclusive of Pacific Gas and Electric Company's bond mortgage or deed of trust. Sacramento City Lines will assume the payment to the City of Sacramento of \$50,000 if and when it abandons the operation of the Number 3 car line and the Number 6 car line. This liability is covered by an agreement of April 17, 1942 by and between Pacific Gas and Electric Company and the City of Sacramento, which agreement is filed in this application as Exhibit 2.

"It is of record that Pacific Gas and Electric Company may sustain, on account of the sale of the properties, a book loss of about \$1,027,673. It is the company's intention to charge this to surplus, subject to an offset resulting from a tax saving because of the loss."

a rate base, we find net earnings and rates of return for the last five years as follows:

(1) Year	(2) Rate Base (a)	(3) Operating Income (b)	(4) Operating Income (c)	(5) Rate of Return (d) Per Cent	(6) Rate of Return (e)
1938.....	\$7,950,000	\$40,234*	\$320,234*	0.51*	4.03*
1939.....	same	239,079	40,921*	3.01	0.51*
1940.....	same	87,185	192,815*	1.09	2.43*
1941.....	same	210,345	69,655*	2.65	0.88*
1942.....	same	1,069,914	889,914	14.72	11.19

* Deficit.

Notes:

- Rate Base, column (2), for purposes of this calculation is assumed the same for each year; value of property should be lower prior to 1942 because net earnings were much smaller or altogether absent.
- Operating income, column (3), according to company's accounting methods, is operating revenue, less operating expenses, taxes, and depreciation in amount apportioned by company of \$500,000 each year.
- Operating income, column (4), is adjusted by fixing depreciation expense in the more nearly adequate amount of \$780,000, as testified to by Research Engineer Mors. Company has increased depreciation expense for 1943 to \$750,000.
- Based on column (3).
- Based on column (4).

All valuation estimates of reproduction cost, or historical cost, together with consideration of book cost, investment figures, value of securities and other criteria of property value have, in rate cases, one main purpose: to assist in the finding of the present fair value of the operative property. In this proceeding we have the management's and the company's board of directors' final judgment of present value expressed not as an estimate or a theoretical figure but in the form of a binding offer to sell at a definite price. Such a determination of present value, it seems to me, is consistent with the actualities and much superior to speculative engineering and accounting estimates.

[fol. 267] In its decision the Commission has estimated that a 6-cent fare will produce an approximate rate of return of 6 per cent on the base figure of \$7,950,000. The company itself, according to the record, can determine within considerable limits what its net earnings and rate of return will be under the 6-cent fare. If better service is provided and the maximum amount of the available equipment placed in operation, greater net revenues and a higher rate of return will of course be obtained than with poor service and much idle equipment. The continued investigation of the company's affairs and the filing of monthly traffic and serv-

ice reports as provided for in the order will enable the Commission to take whatever appropriate action may further be required in this proceeding.

Richard Sachse, Commissioner.

Certified as a True Copy, H. Mathewson, Secretary,
Railroad Commission, State of California. (Seal.)

[fol. 268]

CONCURRING OPINION.

Commissioners C. C. Baker and Justus F. Craemer

In view of the case-history of the Market Street Railway Company of recent years, as reflected from the record herein, our opinion is not in conflict with the conclusion of the majority with respect to the objective of providing for a material improvement in the quality of the service, nor in conflict with the conclusion that the basic fare be reduced to six cents, upon an experimental basis. By reason thereof, and upon the distinct understanding that such fare reduction is to be deemed experimental in character, under war-time conditions, we hereby concur in the said twofold conclusion as set forth in the attached decision.

Viewed as a plan whereby to determine the operating conditions that would obtain through the combination of improved service and a reduced fare structure, together with the fact that the results thereof must be considered decidedly problematical, it is our view that the experimental period should not be of indeterminate duration, but rather for some specific unit of time, during which period the required reports, together with other pertinent matter, would be subject to review by the Commission's staff, as well as by other interested parties, to the end of determining whether a continuation of the experiment be justifiable.

There can be no doubt, of course, but that operations during a reasonable experimental period, upon the basis indicated, will afford an opportunity to test the conclusion of the majority in the face of conditions rendered both abnormal and extraordinary by reason of war-time activities.

It is likewise obvious that, during such experimental period, the volume of traffic on the Market Street Railway system must be materially increased, for otherwise the proposed plan cannot effect a solution of the problem. Such increase in the volume of traffic, of course, will necessitate an increase in the frequency of the service, which, in turn,

will require both additional equipment and additional manpower, with attendant increase in the cost of operations. All this may be achieved, with attendant benefit to both [fol. 269] the transportation agency and the patronizing public. On the other hand, the result may be wholly negative with reference to the desired end. It is thus primed with the element of conjecture.

This proceeding was instituted by the Railroad Commission on its own motion. It thereby assumed full responsibility in the premises, including the burden of proof. But should the experiment fail of its objective, upon the basis of an indeterminate experimental period, then, in such event, the burden would be shifted to the respondent. It would be otherwise in this particular if the proposed plan were based upon an experimental period of specific duration. Furthermore, should the proposed plan prove ineffective, the necessary adjustments to follow would be much more simple, from the standpoint of procedure, and involve much less expense, if the experimental process were subject to a definitely defined period.

We deem it a matter of regret, therefore, that the majority hold to a contrary view with respect to the fixation of a definite experimental period, like unto the practice of the Interstate Commerce Commission in certain cases of recent times, as against the indeterminate period that will obtain under the said majority decision.

For the reason thus indicated, together with other reasons, it is not without reluctance that we thus concur in the conclusion of the majority, as hereinbefore specified. This is, therefore, a concurrence with both limitations and reservations. And it is to be further understood that nothing herein contained may be construed as a concurrence in, or an adoption of, those portions of the majority opinion not herein subjected to specific objection; for be it known that we are in disagreement with the majority opinion with respect to certain of the reasoning processes therein noted, as well as to a number of the assumptions and deductions thereof, and also with reference to the relevancy and the application of some of the cases therein cited in support of the line of reasoning of the majority opinion.

C. C. Baker, Justus F. Craemer, Commissioners.

Certified as a True Copy, H. Mathewson, Secretary.
Railroad Commission, State of California. (Seal.)

[fol. 270] [File endorsement omitted]

BEFORE THE RAILROAD COMMISSION OF CALIFORNIA

Case No. 4680

In the matter of the investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service, and facilities of the Market Street Railway Company

PETITION FOR REHEARING—Filed December 9, 1943

To the Honorable the Railroad Commission of the State of California:

Market Street Railway Company, hereinafter referred to as the "Company," respectfully petitions for a rehearing of the Commission's decision No. 36739 rendered November 30, 1943, in that investigation upon the Commission's own motion as above entitled, in which decision the Commission ordered the Company to reduce its rates for the transportation of passengers upon its electric railway, cable car, and motor and trolley coach system from 7 cents to 6 cents per passenger and made such order effective the twentieth day after its issuance. In support of this petition for rehearing the Company represents and alleges as follows:

I

This petition for rehearing is presented in compliance with the provisions of section 66 of the Public Utilities Act. The petition is being filed in time to stay the effective date of the said decision. Should the Commission refuse to grant a rehearing it is the Company's intention promptly to apply to the Supreme Court of the State of California for a writ of review in accordance with the provisions of sections 67 and 68 of the Public Utilities Act, and to petition [fol. 271] that court for an order suspending or staying the Commission's order pending the determination of the judicial review. Therefore, the Company includes in this petition for rehearing a further prayer that, in the event the Commission denies a rehearing, it nevertheless make an order extending the effective date of said

decision No. 36739 for such reasonable time as the Company may need to file its petition for review in the Supreme Court of California and to press and have heard its motion for a stay of the Commission's action.

It is essential to due process of law that when judicial review of a regulatory order is sought upon the ground that the order is repugnant to the Constitution of the United States a stay of such order shall be afforded as a matter of right. Should the Commission deny a rehearing and not extend the effective date of its order for a period of time sufficient to permit the Company to press and have heard its motion before the Supreme Court for a stay of such order, there would be a denial of the judicial review guaranteed by the Constitution of the United States.

II

In issuing said decision No. 36739 the Commission has not regularly pursued its authority, and has denied the Company due process of law contrary to the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, in that the Commission has ordered the Company to reduce its rates or fares without giving notice that it was being charged with the maintenance of rates that were unreasonably high, or in any other respect unlawful, and without according a fair and complete hearing upon that issue.

Aside from the mere recital in the Commission's order instituting the investigation that the scope of the inquiry would be into the reasonableness of rates as well as the adequacy of service and facilities, no complaint or other [fol. 272] document was then or thereafter served upon the Company charging it with a violation of any duty imposed by the Public Utilities Act. At no time during the hearing was any statement made by the Commission which would put the Company upon notice that the reasonableness of its rates was in issue or that it must be prepared to meet that issue. No witness expressed the opinion that the Company's existing rates were unreasonable, nor did any witness make a statement which should have suggested to the Company that the reasonableness of its rates was being challenged.

The Company had the right to know what charges were being preferred against it, and had the right to a fair hear-

ing thereon after being afforded reasonable time to prepare its defense. Only now, after the Commission has rendered its decision, has it been revealed to the Company what those charges are. The Company is ready to present evidence that its rates are not unreasonable, and it asks that it be afforded full opportunity to do so.

Even now, the Company is not advised by any clear statement in the Commission's opinion on just what theory or basis the Commission premises its order reducing the Company's rates. The opinion does not disclose whether the Commission has taken such action upon some theory that it might now undo a supposed mistake of the Commission itself made in 1937 and 1938 when it permitted the Company to increase its rates from 5 cents to 7 cents; impose a rate reduction merely as a punishment to the Company for failure to render a transportation service of some higher standard; or endeavors to fix just and reasonable rates for the future.

III

In issuing said decision the Commission has not regularly pursued its authority, has denied the Company due process of law and has taken its property without compensation, in violation of its rights under the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, and has acted [fol. 273] arbitrarily and capriciously, in that it has ordered a reduction in the Company's rates without having any substantial evidence before it that the rates now charged are in any respect unreasonable, and particularly in the following respects:

(1) In so far as the Commission may have premised its order reducing rates upon the theory that rates should be no higher than the value of the service rendered, the Commission has acted without substantial or any evidence before it by which the value of the transportation service being rendered by the Company can be measured. Evidence in the record to the effect merely that the transportation service rendered by the Company today is not up to the standard of earlier years, or is inferior to that rendered by the Municipal Street Railway, or some other street railway system, does not constitute substantial or any evidence that the value of the service being rendered is any

less than 7 cents per passenger. Nor has the Commission made any finding as to the value of the service being rendered.

What the Commission has found is that the service is unreasonably bad, and that the Company is guilty of long-time neglect, indifference and mismanagement. The Commission's witnesses did not introduce any evidence justifying such findings in respect to unreasonable service today, or of mismanagement on the part of the Company in the past. Mr. Hunter, the Commission's Chief Transportation Engineer, testified that nowhere in the country are street railway standards of operation up to normal today; that the Company's decreased efficiency of service is attributable largely to the shortage of manpower; that its employees are now working long hours; that the Company cannot operate usable electric cars now lying idle because it cannot get men to operate them; that perhaps its car dispatchers are doing the best that they can to operate cars on schedule. He stated that he could not suggest wherein the Company could do anything more than it is doing to [fol. 274] obtain additional employees. Mr. Jenkins, a former transportation engineer with the Commission and now an officer in the United States Navy, testified that the service being rendered by the Company upon lines serving essential war production plants in San Francisco was entirely satisfactory; that he confers with the Company almost daily, and that it had cooperated with the Navy in meeting all service suggestions.

There was no evidence in the record that the Company is not doing all within its power to maintain the best service possible under present war-time conditions. Nevertheless, by picking and choosing bits of evidence revealed in the Company's records of expenses incurred for the maintenance of its equipment and tracks, the Commission purports to find proof that the Company has been derelict in its service duty. Neither the data referred to by the Commission in its opinion nor the testimony of the witness with respect thereto justifies the Commission's conclusion.

(2) In so far as the Commission may have ordered a reduction in the Company's rates in the belief that existing rates are unjust and unreasonable in violation of section 13 of the Public Utilities Act, it has acted without substantial

or any evidence upon facts essential to that conclusion according to accepted standards of the rate-making process.

There was evidence placed before the Commission showing the financial results of the Company's operations in past years, and up to and including the month of March, 1943. No study was presented to indicate the probable results for the year 1943, and none covering any period of time in the future. Nevertheless, the Commission has made its own assumptions as to what the traffic will be, seemingly for the full year 1943 and for the future as well, and purports to make findings with respect to the Company's revenues, expenses, and net return. It purports to find what the results would be under a 5-cent fare and a 6-cent fare, [fol. 275] although there is no testimony in the record relative to the effect of a rate reduction in any amount.

(3) If the Commission's order reducing the Company's rates be premised upon the assumption that its rates should never have been increased above the fare of 5 cents obtaining before the middle of the year 1937, it has acted without any substantial evidence to support such a conclusion, and has acted contrary to law.

All rate changes made in the past were made by the Company with the authority and approval of the Railroad Commission. Mr. Hunter testified that when those decisions were rendered the traffic and revenues anticipated were based upon the estimates of the Commission's own engineers. The Commission's engineers did not testify that in their opinion the Company would have been better off financially had rates not been increased during the year 1938. They stated merely that the results of such rate increases had not been what were anticipated. The Company's president, Mr. Kahn, declared that such rate increases kept the Company out of bankruptcy, and he explained fully the basis of his conviction.

IV

In issuing said decision No. 36739 the Commission has acted in excess of its authority, and has denied the Company due process of law in violation of the Constitution of the State of California and of the Fourteenth Amendment to the Constitution of the United States, in that the order therein made reducing the rates of the Company from 7

cents to 6 cents amounts to a taking of its property without compensation and the confiscation of its property.

(1) The Commission has erred in assuming that it might lawfully proceed to determine the reasonableness of the Company's rates, and to fix rates for the future, by purporting to measure the worth of the service being rendered. Such a rate-fixing theory is without support in any authoritative decision by court or regulatory commission.

[fol. 276] (2) The Commission has acted unlawfully in declaring that it might "accept" a figure of \$7,950,000 as representing the value of the Company's properties. That figure appears in an exhibit introduced through Mr. Cahill, Manager of Public Utilities of the City of San Francisco, the exhibit being a copy of a resolution of the board of directors of the Company approving the action of Mr. Kahn, its president, in agreeing to sell the Company's operating properties at that price. The proposal to sell had not been submitted to the Company's stockholders for approval. Mr. Cahill did not state that the purpose of the exhibit was to show the value of the Company's properties for use by the Commission in a rate proceeding. No witness presented evidence relative to the value of the Company's properties for rate-making purposes, or expressed an opinion that the sum of \$7,950,000, or any other sum, represented the value of its properties for rate-making purposes, or might reasonably be used for such a purpose.

(3) The Commission's finding that "a six-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate," is in itself a qualified finding, and it is not supported by any substantial evidence in the record, is contrary to the evidence, and the Commission has acted upon evidence not placed in the record.

The steps by which the Commission arrived at the conclusion that a fare of 6 cents would be reasonable is revealed in the figures adopted by the Commission to reflect its assumptions as to operating results for the years 1942 and 1943, and future years.

The Commission first set forth figures taken from the Company's records showing results for the year 1942. Its gross revenue is stated to have been \$7,574,541. Its expenses, including \$500,000 for depreciation and \$425,000 for taxes, were \$6,504,627, and its net return \$1,069,914. The

Commission concedes that \$250,000 more should have been [fol. 277] charged for depreciation, reducing the actual net revenue to \$819,914. From this return the Company had to meet the interest and sinking fund requirements on its bonds, as the Commission previously had authorized it to do when approving its bond covenants, and had to meet also interest and retirement obligations on its unfunded debts that had accumulated from operating losses during earlier years. Although the Commission refers to such profit for the year 1942 as "abnormal," knowing that the Company had not paid a dividend since 1923, it nevertheless seems to say that such a return was "excessive."

The second step was to make assumptions as to what the results of operations might be for the year 1943. There was evidence in the record covering three months of the year and it was stipulated at the hearing on May 10th that the Company's monthly reports to date might be considered. But the Commission's decision refers to revenues received for eight months of the year. The Commission assumes a continued increase in traffic for the full year, and reaches the conclusion that with the 7-cent fare continued in effect the Company's gross revenue for the year 1943 will be \$8,700,000, its expenses \$7,940,000, and its net return \$760,000, a rate of return of 9.6 per cent on a base value of \$7,950,000. Such a return is said to be excessive.

The Commission next made assumptions as to results of operations for the year 1943, and presumably for the future, if only a 5-cent fare were effective. It is found that such a fare would produce a net loss of \$1,153,000 per year. No gross revenue nor expense figures are given. But the Company's expenses could be no less and would be more than \$7,940,000, the amount the Commission believes will be incurred for the year with a 7-cent rate continued in effect. Hence, having found that the net profit of \$760,000 expected at a 7-cent fare would be converted into a net loss of \$1,153, [fol. 278] 000 if a 5-cent fare were in effect, the sum of these figures, or \$1,913,000, is the amount of the expected reduction in gross revenue. Although the Commission does not find that such a net loss of \$1,153,000 would be reasonable, it is intimated that a 5-cent fare may be ordered.

The last step taken by the Commission was to make assumptions as to the effect of the application of a 6-cent fare. It concludes that this rate would yield \$8,500,000 gross.

revenue, expenses will be \$8,000,000, and the net return will be \$500,000, a rate of return of 6 per cent upon the base figure of \$7,950,000 accepted as the value of the Company's properties. Such a return is found to be "more than adequate under existing conditions."

Aside from the fact that such assumptions of possible financial results under various fares are unsupported by any evidence in the record, the calculations themselves reveal obvious error. If a reduction of 2 cents in the Company's existing 7-cent fare would result in a gross revenue decrease of \$1,913,000, as the Commission estimates, it is evident that a reduction of 1 cent would operate to reduce gross revenue by fully one half that amount, for there could not be a greater stimulation of traffic at a 6-cent fare than at a 5-cent fare. Hence, the gross revenue of \$8,700,000 expected by the Commission with the 7-cent fare continued in effect would be reduced by at least \$956,500, making the Company's gross revenue under a 6-cent fare not more than \$7,743,500. Expenses would be at least \$8,000,000, the amount assumed under a 7-cent fare. The result would be that the Company would have no net return at all, but would suffer a deficit of at least \$256,500.

The demonstrated effect of the Commission's action is the confiscation of the Company's property. The Company has made no estimate of the value of its property for rate-making purposes, not realizing that it was called upon to do so because of any issues framed in this proceeding. However, it now alleges that the fair value of its property [fol. 279] upon which it should be entitled to a fair rate of return greatly exceeds the sum of \$7,950,000. Upon the fair value of its properties the Company is entitled to a rate of return sufficient at least to enable it to meet its obligations upon its current and funded debts. It should have enough more than that to assure those who must advance money for improvements and additions to its property that they will have some return upon their investments. The Company believes and alleges that it is entitled to a rate of return considerably in excess of 6 per cent upon the value of the property employed in rendering service.

For each of the reasons above set forth in this petition, said decision No. 36739, and the order therein contained, is arbitrary, erroneous, unlawful, and void.

Wherefore, Market Street Railway Company prays that the Commission grant a rehearing of said decision No.

36739, and that it accord the Company full opportunity to present evidence and argument to controvert the statements, findings, and conclusions expressed in said decision.

The company prays further that, in the event the Commission should deny its petition for rehearing, it make an order extending the effective date of said decision No. 36739 for a period of time sufficient to permit the Company with due diligence to apply to the Supreme Court of California for a writ of review and to pursue its lawful right before said Court to obtain a suspension or stay of the Commission's order pending full judicial review thereof.

Cyril Appel, Pillsbury, Madison & Sutro, Attorneys
for Petitioner.

[fol. 280] *Duly sworn to by Samuel Kahn. Jurat omitted in printing.*

[fol. 281] BEFORE THE RAILROAD COMMISSION OF CALIFORNIA
Case No. 4680

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service, and facilities of the Market Street Railway Company.

ORDER GRANTING ORAL ARGUMENT ON PETITION FOR REHEARING

A petition for rehearing of Decision No. 36739 in the above proceeding having been filed by Market Street Railway Company on December 9, 1943, and good cause appearing, It is ordered that oral argument on said petition for rehearing be and it is hereby granted, said oral argument to be had before the Commission en banc at 10:00 a. m., on Tuesday, December 21, 1943, in the Commission Court Room, Fifth Floor, State Building, San Francisco, California.

It is further ordered that the effective date of Decision No. 36739 be and it is hereby extended until further order of the Commission.

Dated at San Francisco, California, this 15th day of December, 1943.

Frank R. Havenner, Justus F. Cramer, Richard
Sachse, Frank W. Clark, Commissioners.

[fol. 281a] (Notice of Hearing of Oral Argument set for February 3, 1944, dated February 2, 1944, omitted in printing.)

[Fol. 282]

Decision No. 36821

BEFORE THE RAILROAD COMMISSION OF CALIFORNIA

Case No. 4680

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service, and facilities of the Market Street Railway Company.

Cyril Appel, Ivores R. Dains, and Samuel Kahn, for the Market Street Railway Company.

Angelo J. Rossi, Mayor, John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul Beck, for the City of San Francisco.

Mrs. Helen Negrin, in propria persona.

Additional Appearances on Petition for Rehearing:

Felix T. Smith and Henry G. Hayes, for Market Street Railway Company.

Douglas Brookman, for Congress of Industrial Organizations (CIO), and George Wilson, President of CIO.

OPINION ON PETITION FOR REHEARING—January 12, 1944

By the Commission:

Petition for rehearing of the Commission's decision No. 36739 rendered November 30, 1943, was filed by the company on December 9, 1943. On December 15, 1943, we made our order granting oral argument before the Commission en banc and extending the effective date of decision No. 36739 until further order by the Commission. Argument was heard on December 21 and 22, 1943. Mr. Felix Smith arguing for the company, Mr. Dion R. Holm for the City and County of San Francisco, and Mr. Douglas Brookman for the Congress of Industrial Organizations, which has in excess of 35,000 members in San Francisco, who with their families constitute a very substantial group of riders on the

street railway system of the company. Permission was granted to representatives of various organizations and [fol. 283] to individuals present at the hearing to express their views on the matter before us.

According to its petition the company seeks a rehearing on the following grounds:

(1) that due process of law has been denied the company "in that the Commission has ordered the company to reduce its rates or fares without giving notice that it was being charged with the maintenance of rates that were unreasonably high, or in any other respect unlawful, and without according a fair and complete hearing upon that issue";

(2) that the Commission "has acted arbitrarily and capriciously, in that it has ordered a reduction in the company's rates without having any substantial evidence before it that the rates now charged are in any respect unreasonable";

Dr. L. W. Hosford, President of Jefferson Lafayette Improvement Club, et al.

Mrs. Gertrude Lincoln, for Women's Welfare League, et al.

Eugene E. Pfaeffe, President of San Francisco Retailers' Protective Association.

George W. Gearhard, Secretary of Civic League of Improvement Clubs and Associations of San Francisco.

J. F. Calverley, President of Southern Council of Civic Clubs.

Mrs. Sulvina Ratto, Financial Secretary of Central Mission Improvement Association.

Adolph Petry, Chairman of Transportation and Traffic Committee of the Central Council of Civic Clubs.

Irwin C. Easton, Attorney for North Central Improvement Association.

Mrs. Rose Walker, President of Greater Mission Improvement Association.

R. J. O'Rourke, President of San Francisco Property Owners' League.

Lloyd Taylor, Executive Secretary of Market Street Association.

(3) that the Commission's order reducing the company's rates from seven cents to six cents "amounts to a taking of its property without compensation and the confiscation of its property."

In general, our order is alleged to be in violation of the Constitution of the State of California and of the 14th amendment to the Constitution of the United States.

[fol. 284] These three allegations are subdivided and elaborated in the petition for rehearing and it is the purpose of this decision to consider them on the basis of the present record in some detail.

The company did have notice that the reasonableness of its street railway fares were at issue in this proceeding and was accorded a fair and complete hearing upon that issue.

The petition alleges that "At no time during the hearing was any statement made by the Commission which would put the Company upon notice that the reasonableness of its rates was an issue or that it must be prepared to meet that issue." This is an astounding statement in view of the record and is completely contradicted by the nature, scope, and course of the present proceeding. The title of the proceeding, the text of our order instituting this investigation on the Commission's own motion,⁽²⁾ the open-

⁽²⁾ The first two paragraphs of the Order Instituting Investigation read as follows:

"The Commission believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing.

"It Is Ordered that an investigation be and hereby is instituted upon the Commission's own motion into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company."

ing statement of the presiding commissioner on May 10, 1943, the first day of the hearing,⁽³⁾ all gave clear, definite, and unmistakable notice to the company that the reasonableness of its rates and charges, as well as its service and facilities, would be investigated by the Commission. [fol. 285] We proceeded with this case in method and in form exactly as in other similar proceedings involving rates and service of transportation and other utilities.⁽⁴⁾ It may

(3) "Commissioner Havenner: The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the reasonableness of the rates and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company." (tr. 2).

(4) Among proceedings on the Commission's own motion into the reasonableness of rates and service have been the following:

Case 4688, Vallejo Electric Light & Power Company (current proceeding).

Case 4672, Vallejo Bus Company, decision 36242, 3-23-43.

Case 4612, Bay Cities Transit Company, decision 36042, 12-15-42.

Cases 4621-2, Pacific Gas & Electric Company (gas service), decision 36082, 12-29-42.

Case 4478, Interurban Electric Railway Company, Key System, East Bay Transit Company (1940) 43 C. R. C. 181.

Case 4461, Pacific Electric Railway Company, Los Angeles Railway Corporation, Los Angeles Motor Coach Company (dismissed by decision 36338).

Cases 3477, 3604, Southern California Telephone Company et al. (1934) 39 C. R. C. 164.

Case 3153, San Diego Consolidated Gas and Electric Company (1935) 39 C. R. C. 261.

Case 3008, San Joaquin Light and Power Corp. (1932).

Case 3026, Midland Counties Public Service Corp. 37 C. R. C. 530

Case 3424, Pacific Gas and Electric Company (natural gas) (1933) 39 C. R. C. 49.

he said that this form of procedure in rate and service cases brought upon the Commission's own motion, has over a period of more than thirty years been a regularly established and recognized practice of this Commission. This same practice is regularly followed by other state and federal commissions.

The company's management and its counsel understood that this was a rate as well as a service investigation and recognized that service and rates were inseparable and interdependent and must necessarily be considered together. Mr. Kahn, the company's president, appearing as the company's first witness, testified from a prepared statement, commenced his testimony with a review of the rate situation since 1937 when the 5-cent fare was in effect. He reviewed several rate changes authorized by the Commission and their effect upon the company's traffic, revenue, and service (tr. 235 et seq.). He similarly reviewed (tr. 246) the company's experience with the 7-cent fare and [fol. 286] introduced company's exhibit No. 22, estimating what income in his opinion a 5-cent fare would have produced during certain periods in the years 1937, 1938, and 1939. Mr. Kahn's testimony was in fact addressed principally to the matter of rates and to the revenues produced by various rate structures.

Mr. Appel, company's counsel, through Mr. Kahn introduced in evidence company's exhibits Nos. 24 and 25, which are this Commission's decisions Nos. 31472 and 31603, respectively, in application No. 21115. That application was made by the company in 1938 for an order of this Commission "authorizing emergency increases in certain fares" and the decisions referred to, granting experimental increases, are rate decisions. Decision No. 31472, rendered on November 23, 1938, and reported in 41 C. R. C. 651, reviewed the prior rate decisions numbers 29889 and 30849 theretofore rendered in the same proceedings and stated "In decisions numbers 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory." (5)

(5) In Decision No. 29889, 40 C. R. C. 525, the first decision in application No. 21115, the Commission said:

"In reviewing this record, the Commission is not convinced that applicant's proposed fare structure is

[fol. 287] It must be remembered that the decisions referred to were made in compliance with the company's application to authorize "emergency increases in certain fares." The company, under the rules of the Commission, has regularly filed revenue and operating statistics and the Commission has continually kept abreast of the results of the fare changes. In a real sense, therefore, this has been and is now a continuing rate investigation. The Commission's order in the present case is made on that basis and provides for the regular filing with the Commission of future monthly traffic, revenue, and service statements and provides further "that this proceeding shall remain open for further investigation by the Com-

one which best meets the situation, in fact the President of the company has stated that no consideration has been given to any other form of fare (tr. p. 52); that the estimates were of necessity only a guess; and that experience alone could tell what results would obtain if the proposed fare structure were put into effect.

"The Commission has given considerable thought to the matter of selecting a fare structure which will result in the least disturbance of traffic and at the same time provide the needed revenue in the most equitable manner. In our search for such a fare structure we have given consideration to applicant's plan, and have likewise given consideration to a number of forms of fare, such as a straight 6-cent cash fare, zone fares, and the existing 5-cent fare in combination with a 2-cent charge for a transfer.

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

mission." In fact, all of the proceedings involving the reasonableness of the fares of Market Street Railway Company, including the present proceeding, have been kept open and tentative rates established subject to readjustment from time to time as the results of experience may require. We shall again refer to this policy of fixing rates for public utilities. It must be obvious, however, that this policy of establishing tentative rates subject to readjustment as the results of experience may require, which policy is now generally followed by regulatory bodies, best serves the interests of the public as well as the utility, and assures the fairest results to both.

[fol. 288] This record is voluminous on the subject of rates and fares. Mr. Hunter, the Commission's chief engineer, in his testimony relating to fares compared the company's fares with the average streetcar fares throughout the United States and said (tr. 220) that San Francisco's average length of haul is among the lowest in the country, producing a higher fare per mile of travel. He also testified to the relationship of fares to service. Witness Mors, the Commission's transportation research engineer, testified to the company's rate history and in Commission's exhibit No. 10 extensively reviewed the results of the company's operations from 1922 to 1942. This exhibit contains the company's rate history, an analysis of fare structures comparing the effect of the single cash fares with the so-called token fares, the effect of fare changes on operating revenue, and the revenue and passenger trends under various fare structures up to and including a portion of the year 1943. Mr. Cahill, manager of Public Utilities of San Francisco, testified (tr. 83) that the San Francisco Public Utilities Commission strongly advocates a uniform 5-cent fare and universal transfer and (tr. 99) that there should be no charge for transfers and that they would not be worth as much as one cent. With respect to the effect of fare increases of 1937-1938, Witness Hunter (tr. 11, 12 and exhibit 1) testified to the fare passengers and passenger revenues of Market Street and Municipal railways for the years 1933 to 1943. Witness Mors on the same subject testified regarding the effect upon operating revenue of a 2-cent transfer charge and the sale of tokens (tr. 115). Mr. Kahn testified on the loss of his company's traffic to Municipal Railway after the company fare was

increased above the 5-cent rate. The record is voluminous with respect to trends of earnings on the various fares and the effect of the fare changes on the company's net income.

[fol. 289] This brief review of the record in so far as it deals with the company's fares and their effect on traffic, revenue, and service is by no means complete. It is a conclusive answer to the company's allegation it had no notice that the reasonableness of its rate was an issue. The petition on this point concludes with the following paragraph:

"Even now, the company is not advised by any clear statement in the Commission's opinion on just what theory or basis the Commission promises its order reducing the company's rates. The opinion does not disclose whether the Commission has taken such action upon some theory that it might now undo a supposed mistake of the Commission itself made in 1937 and 1938 when it permitted the company to increase its rates from 5 cents to 7 cents; impose a rate reduction merely as a punishment to the company for failure to render a transportation service of some higher standard; or endeavors to fix just and reasonable rates for the future."

This observation we think is gratuitous. Decision No. 36739 is self-explanatory and states the basis on which the order reducing the rate from seven cents to six cents rests. There is no finding and no implication that we proceeded on a theory intending to "undo a supposed mistake" made in 1937 and 1938, when the rates were increased by stages from five to seven cents. Those increases, as heretofore pointed out, were specifically designated as an emergency increase and the three decisions in application No. 21115 leave no doubt that the authorized fares were experimental and subject to revision and adjustment depending upon developing conditions and circumstances. The one-cent rate reduction made in the decision here under consideration was not imposed "as a punishment to the company for failure to render a transportation service of some higher standard" but because of changed conditions and circumstances the Commission finds that a rate in excess of six cents is unreasonable and excessive. The decision is specific that the character and

quality of the service rendered by the company does not justify a rate higher than six cents and that with such [fol. 290] rate the company will be able to earn a fair return on the rate base, provided a reasonably adequate service is furnished and the necessary amount of available equipment is placed in operation.

Reference should here be made to the company's apparent protest in its argument on the petition for rehearing against the Commission's consideration of Exhibit No. 33.⁶ That exhibit is referred to in the transcript under the

⁶ Mr. Smith (tr. 354) said:

"Now, this matter of procedural due process of law also requires that the testimony, the evidence, upon which the Commission acts be taken at the hearing so that the other party may have an opportunity to controvert it and to criticize it.

"This record is most curious. The Commission's decision discloses, and affirmatively, that the Commission used an exhibit, Exhibit No. 33, that was never mentioned at the hearing, never made available to the other party."

And further:

"The Commission's decision speaks of a Commission's exhibit No. 33. I am reading from the first page of the opinion: 'Our staff made its studies and investigation in part prior to the hearing of May 10, and in part during the course of the proceeding, and introduced the results in the form of 18 exhibits.' Then there is a footnote and it lists various exhibits, including No. 33. Now, either this opinion misstates that upon which it acted, or I can't read the opinion, because it seems to me very clear that the opinion says that Exhibit No. 33 was introduced by the Commission, and it was one of the results of the Commission's studies and investigation of the case. Now, I would be very glad and very much relieved if I find that the Commission's staff did not introduce an exhibit of that kind.

"Commissioner Sachse: I think that situation with reference to Exhibit 33 is very clearly set forth on pages 341 and following, and it really starts at page 340 and then runs through to 342."

designation "To be furnished figures on Passengers and Car Hours" and pertains to Exhibit No. 22, introduced by company's witness Kahn, entitled "A study to determine the net income of the Company for the first six months of calendar years 1937, 1938 and 1939 if a 5¢ fare with free transfer had been in effect." In Exhibit No. 22 the number of passengers for the periods covered had been [fol. 291] estimated by Mr. Kahn but the number of passengers actually carried by the company during the three periods was not shown in the exhibit. In the examination of company's witness Newton on September 15, 1943, exhibit 22 was under discussion and the question was asked of Mr. Newton whether the record contained the actual number of passengers carried and the actual number of car hours operated by the company in the three periods, as distinguished from the estimated figures in exhibit 22. The company agreed that these actual operating figures should be in the record and that they were to be given exhibit number 33.⁷ We see no reason why exhibit 33 should not have the Commission's consideration in this record.

⁷ Tr. 340, et seq.:

"Commissioner Sachse: Have we now in the record the actual number of passengers that were carried on the the Market Street lines in the three periods that are shown on the last page of that exhibit, namely, the first 6 months of 1937, first 6 months of 1938 and the first 6 months of 1939, and there also are in addition, the actual number of passengers that were carried, the actual number of car hours that were operated?"

"Mr. Hunter: We have as to passengers and I think as to car hours.

"Commissioner Sachse: My point is in order to compare—

"Mr. Hunter: Yes.

"Commissioner Sachse: —the actual figures with those estimates. We can have that, we should have those figures. They, of course, are available in the records by months, the first 6 months of 1937, the first 6 months of 1938 and the first 6 months of 1939, both passengers and car hours?"

[fol. 292] The Commission Has Not Acted Arbitrarily or Capriciously in Reducing the Company's Rates from Seven Cents to Six Cents and Has Not Acted Without Any Substantial Evidence That the 7-Cent Rate Is Unreasonable.

The petition for rehearing states:

"In so far as the Commission may have premised its order reducing rates upon the theory that rates should be no higher than the value of the service rendered, the Commission has acted without substantial or any evidence before it by which the value of the transportation service being rendered by the company can be measured."

This allegation is unfounded in fact. The extent, character and quality of the company's service at the time of the investigation is referred to in decision No. 36739 and findings are made. The record is replete with testimony on past and present service conditions and with comparative service statistics. There is nothing unusual or difficult about service measurements of street railway service. In the case before us no speculative or theoretical standards need be referred to. The record contains the company's actual operating performance for past years as reported in the

"Mr. Cassidy: May we be excused just a moment? We are checking.

"Commissioner Sachse: Certainly, Mr. Hunter, you do not have to look that up now, just so it may be understood, with the agreement of Mr. Appel, that that will be considered, that information will be considered part of the record.

"Mr. Cassidy: I would suggest, Mr. Commissioner, when those figures are available, that they be put in as an exhibit with a number reserved.

"Commissioner Sachse: Very well.

"Mr. Cassidy: So that might actually be in the record.

"Mr. Appel: We will have no objection to that, to furnishing you whatever information you desire on that line.

"Commissioner Sachse: That information, then, would have the exhibit No. 33."

company's sworn annual reports to this Commission and in the monthly reports filed with us. Such performance is shown in the operating expenses under the several accounts, in the number of cars operated, in the schedules and their performance, in the load factor statistics, in the maintenance records of roadbed, track and equipment, in the depreciation and renewal practices, in the observance of the company's paving obligations under its franchise requirements, and in other actual operating and service records. Such evidence in this case permits of ready and exact comparison of service and operating conditions and standards as they existed when the fare was five cents and under the increased fares subsequent to 1937, and under the 7-cent fare at this time. We find less and greatly inferior service in all respects under the 7-cent fare as compared with the [fol. 293] service rendered under the 5-cent fare. We find that in comparison with the performance of the Municipal Railway the company's service is distinctly inferior. The Municipal road renders its superior service at a 5-cent fare while the charge for this company's inferior service is forty per cent higher, at seven cents.

In its petition the company refers to the satisfactory service furnished to San Francisco's war production plants and to the Navy. We gave consideration and recognition in our decision to the company's efforts in that respect.⁸

⁸ Decision No. 36739 reads:

"No complaint can be made in regard to the company's service to establishments directly serving the war effort, such as shipyards and other war industries, and to Army and Navy concentration points. A letter of commendation from the Office of Defense Transportation is in evidence. Lieut. Commander Jenkins, U. S. N. R., Domestic Transportation Officer, 12th Naval District, (former transportation research engineer of this Commission) testified that the company's service to Naval establishments has been satisfactory and that there has been cooperation with Navy headquarters. He stated that the Navy's transportation service requirements will greatly increase in the near future.

"We wish to put on record our conviction that all service requirements in furtherance of the war effort must have primary consideration of this company, as of all other

Commander Jenkins, who testified on the service to Naval establishments, also stated that he was concerned primarily with "keeping the Navy establishments going and we leave the establishment of service to the general public up to the [fol. 294] other agencies that have jurisdiction over it."

The company's allegations in its petition that "by picking and choosing bits of evidence revealed in the company's records of expenses incurred for the maintenance of its equipment and tracks, the Commission purports to find proof that the company has been derelict in its service duty" and that "neither the data referred to by the Commission in its opinion nor the testimony of the witness with respect thereto justifies the Commission's conclusion" are altogether unwarranted and the record is conclusive that the company has been and now is derelict in its service duty.

The petition refers to Section 13 of the Public Utilities Act⁹ and alleges that we have acted without substantial or any evidence upon facts essential to accepted standards of the rate-making process. The record in this case is conclu-

utilities under our jurisdiction. Within the limits of our authority we are making, and shall continue to make, every effort to cooperate with the Army and Navy and with the appropriate federal agencies towards that end."

⁹ Section 13 of the Public Utilities Act reads:

"(a) All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

"(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

"(c) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

sive, and our decision, we think, sets forth in sufficient detail that the service, the equipment and the facilities of the company are not conducive to the promotion of the safety, health, comfort and convenience of its patrons, employees and the public, and are not adequate, efficient, just and reasonable. This has been true for a number of years past, [fol. 295] and remains true at the present time. In this connection the petition alleges that no study was presented to indicate the probable financial results of the company's operation for the year 1943, or for any time in the future. The petition, and company counsel's argument as well, dwell at length upon the allegation that the Commission made its own assumptions of the traffic, the revenue, the expenses and net return for 1943, and for the future, on the various rates of fare; viz, five cents, six cents and seven cents. The company's position as to what the Commission may do with the record before it in the exercise of its discretion and judgment was stated by counsel in his argument (tr. 403 et seq.). The Commission, according to counsel, can make arithmetical computations, but it cannot reach a deduction or conclusion that earnings or traffic or expenses for the entire year will be proportionate or disproportionate to the experience of a substantial portion of such year, or will be greater or smaller than in the preceding year, even though there be evidence of definite trends and extended actual experience. We cannot accept the company's limitations thus set upon the functions and duties of the Commission in a proceeding of this nature. In our consideration of testimony we are not confined to the operation of an adding or computing machine, nor does the law or common sense prevent our exercise of reasonable judgment on the basis of an entire and voluminous record. In rate cases, particularly when the proceeding is held open for further study and action, the Commission has on numerous occasions in the past established tentative rates subject to readjustment as the results of experience may require. This practice was followed in the 1937 and 1938 rate applications of this company, when several interim rates were ordered and put into effect, although the company had [fol. 296] asked for different fares, and testimony had not been introduced on the specific fares ordered by the Commission.

This point came before the United States Supreme Court in *Clark's Ferry Bridge Company against Public Service Com-*

mission of Pennsylvania, decided on February 5, 1934 (291 U. S. 227). That case involved the validity of an order of the Pennsylvania Commission reducing the rates of Clark's Ferry Bridge Company. That order, in part, prescribed "(1) A rate of 8 cents cash toll for all ordinary passenger automobiles and wagons now paying 10 cents." The order also provided, "That said Company file with this Commission monthly statements of income and operating expenses, showing the number of vehicles passing over its bridge in each class of traffic as contained in its tariff." One of the bases upon which it was claimed by the bridge company that the order of the Pennsylvania Commission was unlawful was that the Commission undertook to forecast into the future what the traffic was going to be and that there were uncertainties and speculative elements in any such future estimate. Upon that matter Mr. Chief Justice Hughes said at page 241:

"The final attack is on the form of the Commission's order. The Commission fixed the amount of the annual gross revenue and then prescribed a tentative schedule of rates. *Appellant says that it is obvious that no one can tell in advance how many vehicles of different tariff classifications will pass over the bridge in a year and what annual gross revenue will be produced by a given schedule of rates. But, as the prescribed rates are expressly stated to be tentative, there is no ground for assuming that the Commission will reject an application to make such changes in the schedule as experience may show to be necessary in order to produce the stipulated revenue.* There is nothing in the order which requires that the test period should be a year or any definite time. From the statements at the bar it appears that appellant has not put the tentative schedule in effect and has made no application to the Commission for a change in the schedule. If the allowance of gross revenue is adequate, as it has been found to be, there is no basis for complaint because of a schedule of [fol. 297] rates which on application may be appropriately modified." (Emphasis supplied.)

The allegation that operating and financial results were in evidence only up to and including the month of March 1943 is incorrect. The stipulation entered into on the first

day of the hearing, May 10, 1943, placed into the record the company's own monthly operating report "from 1938 to date." (Tr. 19, 20). Incorrect also and misleading is the allegation in the petition that the Commission's engineer did not testify to the financial effect of the 1938 rate increases. The record on that point in the transcript, pages 17 and 18, is as follows:

"Commissioner Sachse: Mr. Hunter, while you are back on again now I would like to ask you one or two questions. Taking sheet 1 of this exhibit and also at the same time, if you can, look at page 8. Is my conclusion correct that, after the fare increase in 1937 to the Market Street Railway the net revenue or operating income, notwithstanding the fare increase, disappears completely for the year 1938?

"A. That is correct.

"Q. In other words, before the fare increase in 1937 the operating income of the Company was \$305,577; in 1938 after the fare increase, there was no operating income, but a deficit of \$40,234?

"A. That is correct.

"Q. Then in the succeeding years, 1939, 1940, and 1941 the Company never recovered from these fare increases to even the lowest income, the lowest operating income, which was in 1937; in no year after the fare increase did the operating income reach again the operating income prior to the fare increase, with the exception of the year 1942?

"A. That is correct.

"Q. In other words, am I correct in concluding that the loss in passengers, in fare passengers, was so great up to 1942 that the fare increase was not able to overcome the loss in those passengers?

"A. That is the way the results turned out.

"Q. And, of course, in 1942, that being a war year, that situation changed?

"A. Correct."

Mr. Hunter also testified to the "High riding habit" and the "average short haul," factors which make San Francisco an outstanding streetcar riding community. These factors assure a greater volume of business and revenue if the rate is reduced.

The Commission has based its conclusions on the operating and financial results of the fare increases and not on mere theory. The record shows the company's actual experience and we can see no reason why we should substitute mere theory when we have before us the uncontradicted [fol. 298] facts.

Decision No. 36739 Does not Confiscate the Company's Property

The company alleges in the petition for rehearing that the sum of \$7,950,000 does not represent the fair value of the company's operative property and cannot be used for rate-making purposes. Also, that a 6-cent fare will not produce a net operating income of about \$500,000, or approximately six per cent on the base figure of \$7,950,000 as found by the Commission.

We desire to discuss both allegations in some detail. The methods of determining a lawful and fair rate base by a regulating commission in cases of this nature has repeatedly been defined by the United States Supreme Court, and the principles we must follow to find fair value for rate-making purposes are not obscure. The rule we have applied in the decision in this proceeding was laid down by the United States Supreme Court in *Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California* (289 U. S. 287). Mr. Chief Justice Hughes delivered the opinion of the court and said at Page 305:

"As the property remains in the ownership of the complainant, the question is whether the complainant has been deprived of a fair return for the service rendered to the public in the use of the property. This Court has repeatedly held that the basis of calculation is the fair value of the property, that is, that what the complainant is entitled to demand, in order that it may have 'just compensation,' is 'a fair return upon the reasonable value of the property at the time it is being used for the public.' (Footnote citing cases) *In determining that basis, the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available. The property is not ordinarily the subject of barter and sale and, when rates themselves are in dispute, earnings produced by rates*

do not afford a standard for decision. The value of the property, or rate base, must be determined under these inescapable limitations. And mindful of its distinctive function in the enforcement of constitutional rights, the Court has refused to be bound by any artificial rule or formula which changed conditions might upset. We have said that the judicial ascertainment of value for the purpose of deciding whether rates are confiscatory 'is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts'."—Citing cases—(Emphasis supplied).

[fol. 299] In the present case the property has recently twice been the subject of barter and was offered for sale, and its market value, or what is called exchange value, is available. The ascertainment of the present market or exchange value appears to have been exceptionally competent and authoritative. It was not based on opinion, testimony, or expert appraisal, but was made by the company's management and directors after extended studies and negotiations. The offer twice made, to sell all the operative property at the price of \$7,950,000 was made, we must assume, in good faith since it was officially submitted to the City and County of San Francisco.¹⁰

¹⁰ The minutes of the company's directors' meeting of September 24, 1942, as shown in the transcript (p. 102) read in part as follows:

"Sale of the operative properties of Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he has agreed with the Mayor and other City Officials, as well as the Board of Supervisors, to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash, and that a charter amendment for the purpose of raising such sum by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at the next general election on November 3, 1942. The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best

[fol. 300] An election was held, as agreed between the City and the Company, and the proposition to purchase the property at the price named failed to receive the required vote. That outcome, however, can have no bearing on the company's own measure of the market value of its own property. The deduction might be drawn that the price was higher than the majority of the voters were willing to pay.

In his argument on the value of the company's property, Mr. Smith points to the established rule that a utility valuation in a rate case cannot be based upon the capitalization of earnings, and he implies that the \$7,950,000 figure was reached by that method. There is nothing in the record to indicate or suggest such a basis of valuation. The minutes of the directors' meeting, referred to above, clearly show how the market value was reached: "The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company." The Board of Directors, as has been shown, confirmed the judgment and conclusion of the company's president.

price obtainable from the City and County of San Francisco for the operative properties of the Company.

"Whereupon, on motion of Director Scott, duly seconded by Director Lilienthal, the following resolution was adopted:

"Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further Resolved, that the Officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

The petition for rehearing purports to reveal the steps by which we arrived at the conclusion that six cents is a reasonable fare. The recital of these alleged steps amounts to a complete misstatement of the plain language of our decision and the computations ~~based upon such misstatements must necessarily lead to altogether erroneous and~~ absurd numerical results. Such false results, in dollars of revenue, expense and not operating revenue, are shown in the petition and in greater detail in a series of four tables submitted by counsel to the Commission in the course [fol. 301] of his argument. The Company's misleading computations are ostensibly based on the findings contained in our decision, when as a matter of fact the plain language of that decision clearly substantiates our conclusion that a 6-cent fare, with reasonably efficient operation and service, will meet all operating expenses and in addition produce a return of approximately 6 per cent on the base figure of \$7,950,000.

The company first (on page 7 of the petition) refers to the operating results for 1942, apparently taken from the table on page 24 of our decision. There is no dispute as to the correctness of the figures for that year, including the net return figure of \$1,069,914. These figures, it is to be remembered, are from the company's own 1942 income statement furnished the Commission in the regular sworn annual report. The petition then continues with the following allegation:

"The Commission concedes that \$250,000 more should have been charged for depreciation, reducing the actual net revenue to \$819,914. From this return the Company had to meet the interest and sinking fund requirements on its bonds, as the Commission previously had authorized it to do when approving its bond covenants, and had to meet also interest and retirement obligations on its unfunded debt that had accumulated from operating losses during earlier years."

This allegation is incorrect. The depreciation practices of the company are in evidence in this record in great detail. Consecutively for eight years prior to and including 1942 the company voluntarily charged \$500,000 annually to depreciation and each year's net income is stated on

that basis. There is no reason why the company's depreciation accounting should be changed by us for the year 1942 any more than for any other year. The fact that the company paid its interest and sinking fund charges in part out of its depreciation reserve, instead of making necessary replacements of depreciated equipment, is not relevant at this point.

[fol. 302] Next, the petition complains of our estimate on the results of operations for the year 1943 under the 7-cent fare, with reference to traffic, revenue, expenses, and net return. The complaint is that we considered the actual operating figures for eight months of the year and that we made assumptions for the remaining four months. On that account our conclusion that with the 7-cent fare continued in effect and with the quantities of service continuing and the number of cars operating as theretofore, the gross revenue for the full year 1943 would be \$8,700,000, the expenses \$7,940,000 and the net return \$760,000, and the rate of return 9.6 per cent is alleged to be erroneous and contrary to due process. We have stated above the basis of our conclusions. It would be very simple to meet the test of fairness suggested by company counsel in his argument on rehearing⁽¹¹⁾ if our 1943 estimates were checked against the actual operating performance according to the company's own records and filed with this Commission under our order in this continuing rate proceeding. Counsel refused; however, to stipulate to such a check and in order to avoid a possible technical pitfall in the law on evidence we will not argue this point. We are confident the Commission kept within the limits of its discretionary judgment in concluding that the remaining months of 1943, with no change of fare and no material change in service, would follow the established trend as evidenced in the record.

The petition next purports to show the "assumptions" made by us as to the results of the operation for the year 1943, "and presumably for the future," under a 5-cent

⁽¹¹⁾ Mr. Smith said (tr. 346): "Now, this matter of procedural due process of law is a very simple matter. Lawyers often use, though, many complicated words to express simple things. What we mean is fair play."

fare. The petition says "It is found that such a fare would produce a net loss of \$1,153,000 per year." The petition ignores the qualified and all-important language in our decision "without any allowance whatever for increased [fol. 303] traffic."⁽¹²⁾ The net loss of \$1,153,000 per year, without considering the qualifying language in the decision, is obviously a mere mathematical calculation and reached by applying a 5-cent fare to the identical number of 7-cent fare passengers, i. e., a reduction of two cents for each of the 7-cent fare passengers. On this basis the petition concludes: "Hence, having found that the net profit of \$760,000 expected at a seven-cent fare would be converted into a net loss of \$1,153,000 if a five-cent fare were in effect, the sum of these figures, or \$1,913,000, is the amount of the expected reduction in gross revenue." The Commission, it must be clear, made no such assumptions and reached no such conclusions.

The petition, continuing on its erroneous basis, then presumes to explain "The last step taken by the Commis-

⁽¹²⁾ The decision, page 31, reads as follows:

"The fixing of a five-cent fare on a twelve months' basis, *without any allowance whatever for increased traffic*, and including in operating expenses \$500,000 for depreciation, would result in a deficit of about \$1,153,000. On the basis of the record the indications are that with a five-cent fare a 25% to 30% increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5% return on the \$7,950,000 base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area." (Emphasis supplied).

sion as to the effect of the application of a six-cent fare." Decision No. 36739, page 32, reads as follows:

"We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes [fol. 304] and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions."

The company in its petition, however, comes to a different conclusion. It says "If a reduction of 2 cents in the Company's existing seven-cent fare would result in a gross revenue decrease of \$1,913,000, as the Commission estimates, it is evident that a reduction of one cent would operate to reduce gross revenue by fully one half that amount, for there could not be a greater stimulation of traffic at a six-cent fare than at a five-cent fare." Above it was shown that in its allegation of what the five-cent fare would accomplish, the Commission's qualifying language as to what a reasonable increase in traffic would do had been entirely ignored by the company and no allowance whatever for increased traffic was made in the company's estimate of \$1,913,000 reduction in gross revenue. In its estimate for the 6-cent fare, and coming to the conclusion that a deficit of at least \$256,500 would be suffered, the petition reasons that "there could not be a greater stimulation of traffic at a 6-cent fare than at a 5-cent fare." Having made no allowance for any stimulation of traffic at a 5-cent fare, the company follows the same erroneous assumption as to the 6-cent fare.

A casual inspection of decision No. 36739 shows that the Commission concluded with the 6-cent fare under reasonably satisfactory and adequate service, and with the operation of adequate available equipment, the next 12-months'

annual gross revenue would be \$8,500,000 as compared with the 1943 revenue under the 7-cent fare of \$8,700,000, a reduction of \$200,000. For the future 12-months' period under the 6-cent fare the Commission made its allowance [fol. 305] of \$8,000,000 of operating expenses compared with the 1943 operating expenses under the 7-cent fare of \$7,940,000, an increased allowance for operating expenses of \$60,000. Deducting the operating expenses from the operating revenue, under the future 6-cent fare, leaves a 12-month not operating income of \$500,000, which we concluded would be the approximate amount available for return, corresponding to a rate of return of about 6 per cent on the base figure of \$7,950,000. Such a rate of return, we concluded, would be more than adequate under existing conditions.

Conclusion

The Supreme Court of the United States has just rendered another decision which supports our views of the policy and methods we have followed throughout these proceedings. We refer to the case of *Federal Power Commission v. Hope Natural Gas Company*, decided by the United States Supreme Court as recently as January 3, 1944. This case involved the legality of an order of the Federal Power Commission reducing the rates charged for natural gas by Hope Natural Gas Company. It is unnecessary here to discuss that case at length. We do desire, however, to quote portions of that decision which are particularly pertinent here. In upholding the order of the Federal Power Commission Mr. Justice Douglas, in stating the opinion of the Court, says:

"When we sustained the constitutionality of the Natural Gas Act in the *Natural Gas Pipeline Co.* case, we stated that the 'authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the States under the Fourteenth to regulate the prices of commodities in intrastate commerce.' 315 U. S. p. 582. Rate-making is indeed but one species of price-fixing. *Munn v. Illinois*, 94 U. S. 113, 134. The fixing of prices, like other applications of the

police power, may reduce the value of the property [fol. 306] which is being regulated: *But the fact that the value is reduced does not mean that the regulation is invalid.* *Block v. Hirsh*, 256 U. S. 135, 155-157; *Nebbia v. New York*, 291 U. S. 502, 523-539 and cases cited. *It does, however, indicate that 'fair value' is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated.*"⁹ (Footnote 9 omitted) (emphasis supplied.)

In the case before us the Market or exchange value of the company's operative property was not reduced by any lower rates prescribed by this Commission. On the contrary, the Commission in the 1937-1938 proceedings heretofore referred to substantially increased the company's rates. That increase, by stages from five to seven cents, finally amounted to a raise of 40 per cent. Notwithstanding the increase the company's net revenues fell below the previous net revenue from the 5-cent fare in each of the subsequent years 1938, 1939, 1940 and 1941 when the higher fare was in effect. The record is conclusive that the value of the company's property declined because of the operation of economic forces and, particularly, by reason of the effective competition of the Municipal Railway which furnished a better service at the lower rate.

The decision of the United States Supreme Court in the case referred to continues:

[fol. 307] "We held in *Federal Power Commission v. Natural Gas Pipeline Co.*, *supra*, that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' *Id.*, p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act, *Id.*, p. 586. Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is con-

trolling. Cf. *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co. v. Commission* (No. 1) 294 U. S. 63, 70; *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). *It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end.* The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Cf. *Railroad Commission v. Cumberland Tel. & T. Co.*, 212 U. S. 414; *Lindheimer v. Illinois Tel. Co.*, *supra*, pp. 164, 169; *Railroad Commission v. Pacific Gas & E. Co.*, 302 U. S. 388, 401." (emphasis supplied)

Later in the same opinion the Court says:

"It is suggested that the Commission has failed to perform its duty under the Act in that it has not allowed a return for gas production that will be enough to induce private enterprise to perform completely and efficiently its functions for the public. The Commission, however, was not oblivious of those matters. It considered them. It allowed, for example, delay rentals and exploration and development costs in operating expenses. No serious attempt has been made here to show that they are inadequate. *We certainly cannot say that they are, unless we are to substitute our opinions for the expert judgment of the administrator's to whom Congress entrusted the decision. Moreover, if in light of experience they turn out to be inadequate for development of new sources of supply, the doors of the Commission are open for increased allowances. This is not an order for all time. The Act contains machinery for obtaining rate adjustments.*" (emphasis supplied).

This latest decision of the-Supreme Court of the United States, we are confident, supports our decision No. 36739 in these proceedings. We have found that a 6-cent fare for [fol. 308] Market Street Railway Company is just and reasonable and that any fare in excess of six cents is unjust and unreasonable. If, in the light of experience, the 6-cent fare should prove to be unreasonable under all the circumstances present in the operation of the company's street railway system, the Public Utilities Act contains the machinery for obtaining rate adjustments.

Our decision makes provision for the filing of monthly operating and service reports and we shall keep ourselves continuously informed of the traffic and revenue results from the 6-cent fare and also of all other pertinent operating and service facts. If, in the light of the actual experience, it appears that the fare should be changed we shall, on our own initiative, take appropriate action.

We conclude that the petition of Market Street Railway Company for rehearing of decision No. 36739 should be denied.

Order Denying Rehearing

Market Street Railway Company having filed a petition for a rehearing of decision No. 36739 in the above proceeding, the Commission having granted and heard oral argument on said petition, and being of the opinion that rehearing should be denied, It is ordered as follows:

1. That the petition of Market Street Railway Company for a rehearing of decision No. 36739 be and it is hereby denied.
2. That the effective date of decision No. 36739 be and it is hereby extended to February 11, 1944.

Dated at San Francisco, California, January 12, 1944.

Certified as a true copy R. J. Pajaliet, Asst. Secretary
Railroad Commission of the State of California.

Richard Sachse, Frank R. Havenner, Frank W.
Clark, Commissioners.

[fols. 309-310] (Petition for Extension of Effective Date of Decision No. 36739, filed by Market Street Railway Company on February 1, 1944, omitted in printing.)

[fols. 311-314] (Railroad Commission Decision No. 36852, Order postponing effective date of Decision No. 36739, omitted in printing.)

[fol. 315]

CASE No. 4680—EXHIBIT No. 1

Witness: Hunter—Date: May 10, 1943—Com. En Banc

Market Street Railway Company

Comparative Income Statement—Years 1932 to 1942, Inclusive, and 1942 and 1943 by Months

Year	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Depreciation and Taxes	Depreciation	Taxes	Operating Income	Non-Operating Income (Net)	Gross Income	Deductions from Gross Income	Net Income
1932.....	\$7,739,168	\$66,339	\$7,805,507	\$6,535,294	\$262,531	\$399,000	\$608,682	\$15,986	\$624,668	\$616,297	\$8,371
1933.....	7,347,445	59,971	7,407,416	5,939,749	498,271	382,000	587,396	14,390	601,786	596,771	5,015
1934.....	7,225,951	46,910	7,272,861	5,794,003	361,467	416,000	701,391	13,507	714,898	709,596	5,302
1935.....	7,260,560	63,395	7,323,955	5,889,563	500,000	328,009	606,383	11,902	618,285	543,598	74,687
1936.....	7,437,290	71,064	7,508,354	5,918,367	500,000	306,500	783,487	10,242	793,729	511,290	282,439
1937.....	7,115,908	63,846	7,179,754	5,972,177	500,000	402,000	305,577	10,588	316,165	484,115	167,950*
1938.....	6,416,053	58,449	6,474,502	5,582,736	500,000	432,000	40,234*	10,840	29,394*	466,431	495,825*
1939.....	6,367,316	69,000	6,436,316	5,273,237	500,000	424,000	239,079	6,979	246,058	451,008	204,950*
1940.....	6,015,609	53,015	6,068,624	5,065,439	500,000	416,000	87,185	5,720	92,905	358,715	265,810*
1941.....	6,024,334	38,340	6,062,674	4,936,329	500,000	416,000	210,345	8,267	218,612	333,422	114,810*
1942.....	7,535,732	38,808	7,574,541	5,579,127	500,000	425,500	1,069,914	7,512	1,077,426	322,948	754,478

* Red figures.

(a) Consisting of Passenger Revenue and Other Revenue.

[fol. 316]

Mo. 1942	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Taxes	Operating Income	Non- Operating Income (Net)	Gross Income	Deduct- ions from Gross Income	Net Income
Jan.....	\$533,771	\$3,120	\$536,891	\$440,796	\$41,667	\$35,000	\$19,428	\$665	\$20,093	\$25,900	\$5,807*
Feb.....	506,935	2,633	509,568	405,312	41,667	35,000	27,389	627	28,216	27,207	1,009
Mar.....	586,172	2,843	589,015	436,440	41,667	35,000	75,908	637	76,545	27,197	49,348
Apr.....	579,823	3,192	583,015	439,546	41,667	35,000	66,802	638	67,440	27,264	40,176
May.....	602,346	3,433	605,779	437,922	41,667	35,000	91,190	611	91,801	27,177	64,624
June.....	609,269	3,284	612,553	461,041	41,667	35,000	74,845	572	75,417	27,161	48,256
July.....	640,011	3,208	643,219	472,598	41,667	35,000	93,954	552	94,506	26,961	67,545
Aug.....	654,451	3,364	657,815	467,207	41,667	35,000	113,941	540	114,481	26,955	87,526
Sept.....	662,557	3,056	665,613	464,025	41,667	35,000	124,921	786	125,708	26,733	98,975
Oct.....	722,184	3,707	725,892	540,504	41,667	37,000	106,720	551	107,272	26,482	80,790
Nov.....	675,214	3,608	678,822	479,432	41,667	36,000	121,723	551	122,274	26,434	95,840
Dec.....	762,999	3,360	766,359	534,302	41,667	37,500	152,890	781	153,671	27,475	126,196
Total 1942	\$7,535,732	\$38,808	\$7,574,541	\$5,579,127	\$500,000	\$425,500	\$1,069,914	\$7,512	\$1,077,426	\$322,948	\$754,478
1943											
Jan.....	\$704,530	\$3,209	\$707,739	\$505,160	\$41,667	\$37,000	\$123,912	\$867	\$124,779	\$24,703	\$100,076
Feb.....	666,038	3,384	669,422	494,282	41,667	36,000	97,473	825	98,298	25,786	72,513
Mar.....	749,088	3,437	752,525	584,490	41,667	31,000	95,369	988	96,357	25,492	70,865

* Red figures.

Municipal Railway of San Francisco

Comparative Income Statement—Years 1932 to 1942, Inclusive, and 1942 and 1943 by Months

Year	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Taxes	Operating Income	Non- Operating Income (Net)	Gross Income	Deduc- tions from Gross Income	Net Income
1932.....	\$2,971,542	\$25,966	\$2,997,508	\$2,951,168	\$286,444	.....	\$240,104*	\$21,073	\$219,031*	\$115,946	\$334,977*
1933.....	2,758,308	24,830	2,783,138	2,621,149	169,800	.....	7,811*	18,374	10,563	106,401	95,838*
1934.....	2,928,008	23,246	2,951,254	2,639,119	76,303	.....	235,832	24,164	259,996	96,856	163,140
1935.....	3,011,229	23,562	3,034,791	2,742,517	100,000	.....	192,274	39,032	231,306	96,284	135,022
1936.....	3,114,593	24,743	3,139,336	2,895,470	100,000	.....	143,866	106,476	250,342	84,649	165,693
1937.....	3,266,642	27,000	3,293,642	2,911,810	100,000	.....	281,832	7,234	289,066	82,784	206,282
1938.....	3,746,068	29,777	3,775,845	3,252,252	185,000	.....	338,593	8,697	347,290	122,061	225,229
1939.....	4,250,461	42,849	4,293,310	3,414,807	988,847†	.....	110,344*	14,955	95,389*	78,515	173,904*
1940.....	4,039,341	44,238	4,083,779	3,507,334	382,199	.....	194,246	5,469	199,715	64,583	135,132
1941.....	4,057,995	47,840	4,105,834	3,505,699	398,632	.....	201,503	11,542	213,045	64,814	148,231
1942.....	4,849,788	42,929	4,892,717	3,901,842	413,598	.....	577,276	18,472	595,748	54,583	541,165

* Red figures.

† Includes Adjustment for Previous Years.

[fol. 318]

Month 1942	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Tax
Jan.	\$355,135	\$3,782	\$358,917	\$295,368	\$34,270	.....
Feb.	334,546	3,887	338,433	274,967	34,270	.....
Mar.	386,118	3,762	389,880	299,991	34,270	.....
Apr.	378,318	3,721	382,039	298,911	34,270	.....
May.	386,319	3,814	390,133	308,213	34,270	.....
June.	392,917	2,507	395,424	312,710	34,270	.....
July.	408,016	3,506	411,522	343,774	34,361	.....
Aug.	414,908	3,406	418,315	342,488	34,965	.....
Sept.	419,668	3,741	423,409	331,173	34,663	.....
Oct.	453,727	3,422	457,149	350,775	34,663	.....
Nov.	426,624	3,250	429,874	344,098	34,663	.....
Dec.	493,490	4,129	497,620	364,372	34,663	.....
Total.	<u>\$4,849,788</u>	<u>\$42,929</u>	<u>\$4,892,717</u>	<u>\$3,901,842</u>	<u>\$413,598</u>	.....
1943						
Jan.	\$471,451	\$3,265	\$474,716	\$366,846	\$34,663	.....
Feb.	452,562	3,287	455,850	341,471	34,663	.....
Mar.	508,480	3,194	511,674	375,639	34,663	.....

* Red figures.

	Operating Income	Non- Operating Income (Net)	Gross Income	Deductions from Gross Income	Net Income
	\$29,279		\$29,279	\$4,583	\$24,696
	29,196	\$1,437	30,633	4,583	26,050
	55,619	1,282*	54,337	4,583	49,754
	48,858		48,858	4,583	44,275
	47,650	1,367	49,017	4,583	44,434
	48,444	5,120	53,564	4,583	48,981
	33,386		33,386	4,583	28,802
	40,861	84	40,945	4,583	36,362
	57,571	286	57,858	4,583	53,274
	71,710		71,710	4,583	67,127
	51,113	1,194	52,307	4,583	47,724
	98,584	10,266	108,850	4,167	104,684
	<u>\$577,276</u>	<u>\$18,472</u>	<u>\$595,748</u>	<u>\$54,583</u>	<u>\$541,165</u>
	\$73,207	\$497*	\$72,709	\$4,167	\$68,543
	79,715		79,715	4,167	75,548
	103,372	3,291	106,662	4,167	102,496

[fol. 319]

Combined Income Statement

Market Street Railway and Municipal Railway of San Francisco

Years 1932 to 1942 Inclusive and 1942 and 1943 by Months

Year	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Taxes	Operating Income	Non- Operating Income (Net)	Gross Income	Deduc- tions from Gross Income	Net Income
1932.....	\$10,710,710	\$92,305	\$10,803,015	\$9,486,462	\$548,975	\$399,000	\$368,578	\$37,059	\$405,637	\$732,243	\$326,606*
1933.....	10,105,753	84,801	10,190,554	8,560,898	668,071	382,000	579,585	32,764	612,349	703,172	90,823*
1934.....	10,153,959	70,156	10,224,115	8,433,122	437,770	416,000	937,223	37,671	974,894	806,452	168,442
1935.....	10,271,789	86,957	10,358,746	8,632,080	600,000	328,009	798,657	50,934	849,591	639,882	209,709
1936.....	10,551,883	95,807	10,647,690	8,813,837	600,000	306,500	927,353	116,718	1,044,071	595,939	448,132
1937.....	10,382,550	90,846	10,473,396	8,883,987	600,000	402,000	587,409	17,822	605,231	566,899	38,332
1938.....	10,162,121	88,226	10,250,347	8,834,988	685,000	432,000	298,359	19,537	317,896	588,492	270,596*
1939.....	10,617,777	111,849	10,729,626	8,688,044	1,488,847	424,000	128,735	21,934	150,669	529,523	378,854*
1940.....	10,054,950	97,453	10,152,403	8,572,773	882,199	416,000	281,431	11,189	292,620	423,298	130,678*
1941.....	10,082,328	86,180	10,168,508	8,442,028	898,632	416,000	411,848	19,809	431,657	398,236	33,421
1942.....	12,385,520	81,737	12,467,258	9,480,969	913,602	425,500	1,647,190	25,984	1,673,174	377,531	1,295,643

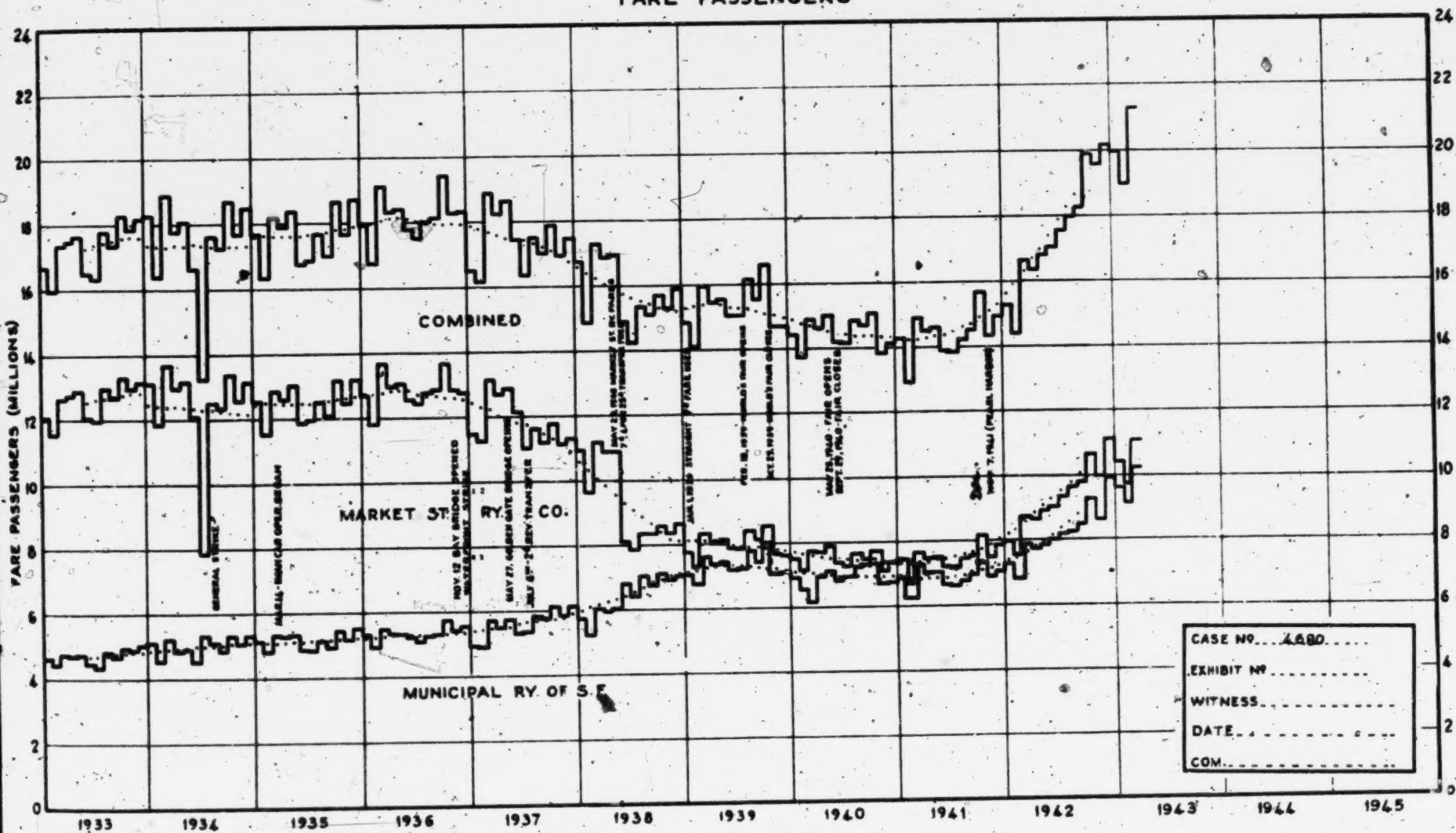
* Red figure.

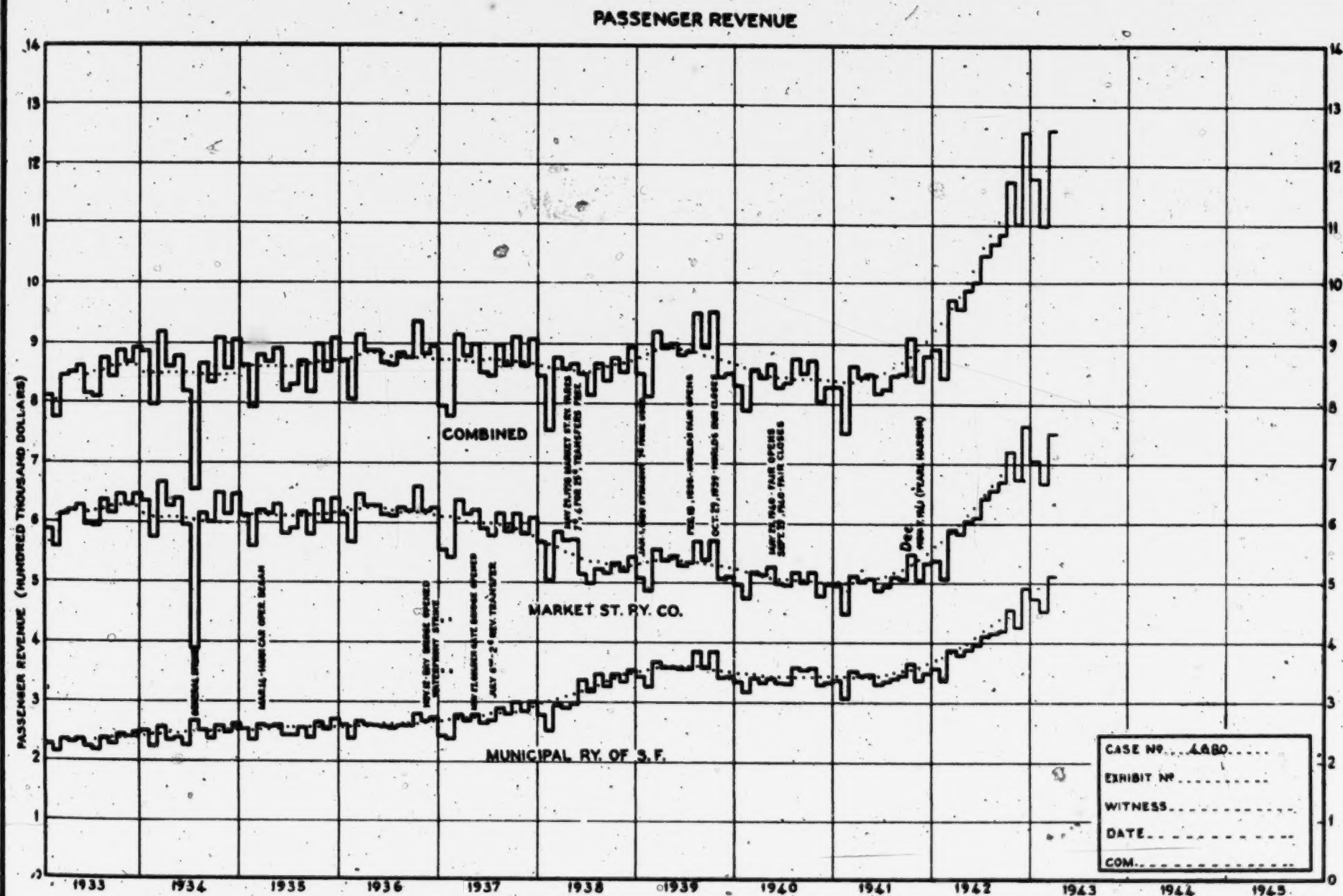
[fol. 320]

Month 1942	Passenger Revenue	Other Revenue	Operating Revenue	Operating Expenses Excluding Deprecia- tion and Taxes	Deprecia- tion	Taxes	Operating Income	Non- Operating Income (Net)	Gross Income	Deduc- tions from Gross Income	Net Income
Jan.	\$888,906	\$6,902	\$895,808	\$736,164	\$75,937	\$35,000	\$48,707	\$665	\$49,372	\$30,483	\$18,889
Feb.	841,481	6,520	848,001	680,279	75,937	35,000	56,785	2,064	58,849	31,790	27,059
Mar.	972,290	6,605	978,895	736,431	75,937	35,000	131,527	645*	130,882	31,780	99,102
Apr.	958,141	6,913	965,054	738,457	75,937	35,000	155,660	638	116,298	31,847	84,451
May.	988,665	7,247	995,912	746,135	75,937	35,000	438,840	1,978	140,818	31,760	109,058
June.	1,002,186	5,791	1,007,977	773,751	75,937	35,000	123,289	5,692	128,981	31,744	97,237
July.	1,048,027	6,714	1,054,741	816,372	76,028	35,000	127,340	552	127,892	31,544	96,347
Aug.	1,069,359	6,770	1,076,130	809,695	76,632	35,000	154,802	624	155,426	31,538	123,888
Sept.	1,082,225	6,797	1,089,022	795,198	76,330	35,000	182,492	1,072	183,566	31,316	152,249
Oct.	1,175,911	7,129	1,183,041	891,279	76,330	37,000	178,430	551	178,982	31,065	147,917
Nov.	1,101,838	6,858	1,108,696	823,530	76,330	36,000	172,836	1,745	174,581	31,017	143,564
Dec.	1,256,489	7,489	1,263,979	898,674	76,330	37,500	251,474	11,047	262,521	31,642	230,880
Total.	12,385,520	81,737	12,467,258	9,480,969	913,602	425,500	1,647,190	25,984	1,673,174	377,531	1,295,643
1943											
Jan.	\$1,175,981	\$6,474	\$1,182,455	\$872,006	\$76,330	\$37,000	\$197,119	\$370	\$197,488	\$28,870	\$168,619
Feb.	1,118,600	6,671	1,125,272	835,753	76,330	36,000	177,188	825	178,013	29,953	148,061
Mar.	1,257,568	6,631	1,264,199	958,128	76,330	31,000	198,741	4,279	203,019	29,659	173,361

* Red figure.

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OPERATING REVENUE AND DISTRIBUTION OF EXPENSES 1932 TO 1943

CASE No. 4680

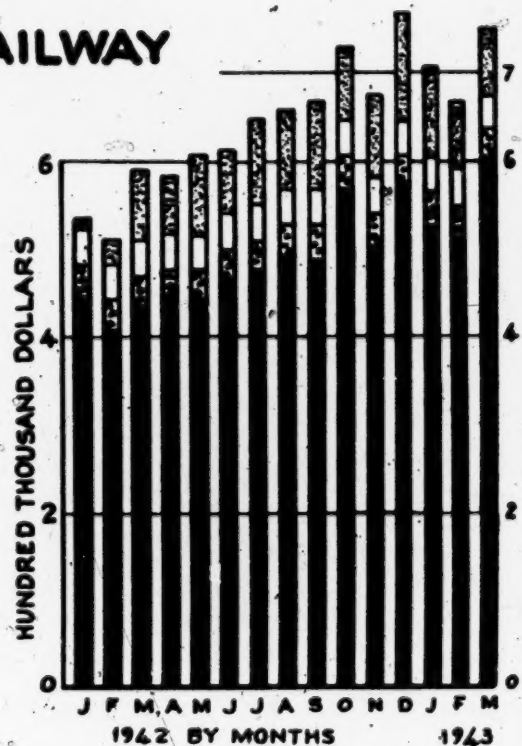
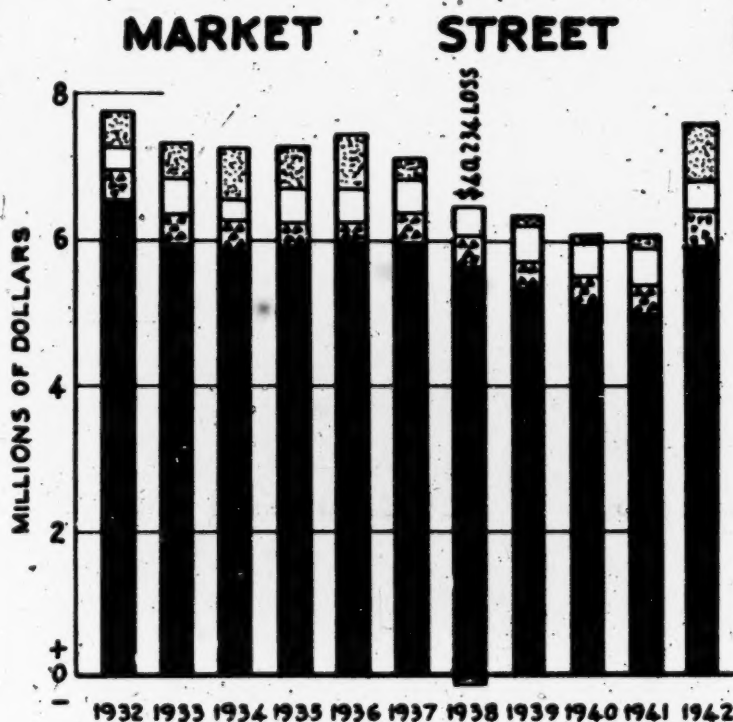
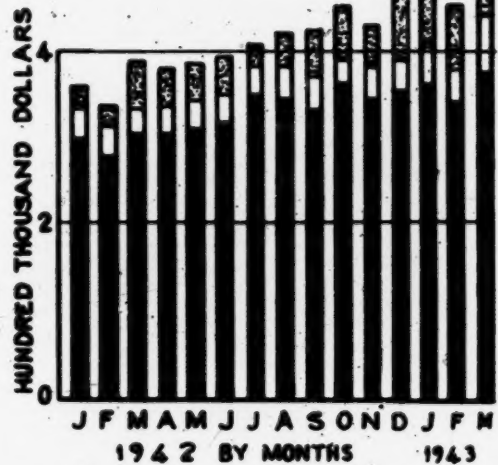
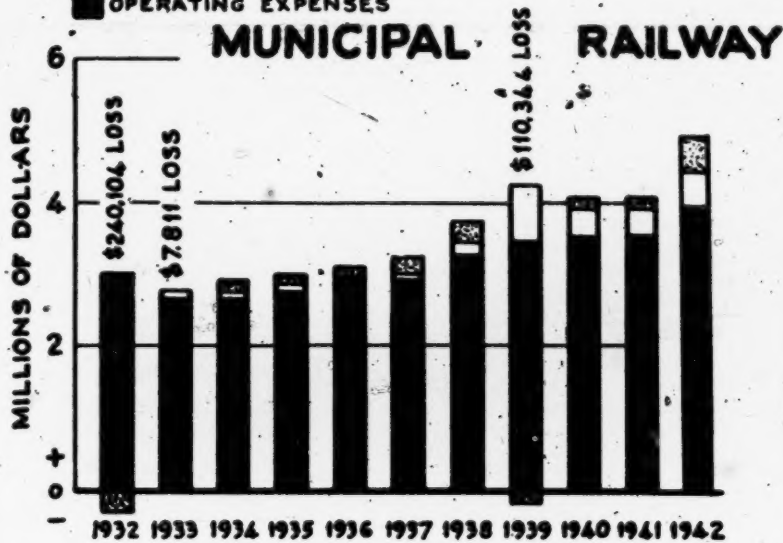
EXHIBIT No. _____

WITNESS _____

DATE _____

COM. _____

OPERATING INCOME
 DEPRECIATION
 TAXES
 OPERATING EXPENSES



Amounts tabulated in Exhibit No. _____

[fol. 324]

CASE No. 4680—EXHIBIT No. 2
 Witness: Donovan—May 10, 1943

Market Street Railway Company

Comparative Balance Sheet

	December 31, 1938	December 31, 1939	December 31, 1940	December 31, 1941	December 31, 1942
Assets and Other Débits					
Road and Equipment.....	\$45,294,663.12	\$45,000,426.97	\$44,303,824.33	\$42,919,806.00	\$41,769,229.27
Sinking Funds.....	210.84	127.42	24,756.17	26,234.03	27,352.76
Investments.....	4.00	4.00	4.00	3.00	3.00
Current Assets..... (Note # 1)	740,718.83	539,618.22	467,279.72	565,291.17	1,571,705.03
Unadjusted Debits.....	211,995.40	178,753.85	195,819.83	175,239.64	165,204.61
Reacquired Long Term Debt.....		28,000.00	28,000.00	20,000.00	25,000.00
Total Assets and Other Débits.....	\$46,247,592.19	\$45,746,930.46	\$45,019,684.05	\$43,706,573.84	\$43,558,494.67
Liabilities and Other Credits					
Capital Stock Outstanding..... (Note # 2)	\$31,926,450.00	\$31,926,450.00	\$31,926,405.00	\$31,926,450.00	\$31,926,450.00
Long Term Debt..... (Note # 3)	5,692,895.18	6,088,070.42	6,058,870.92	6,177,100.79	5,994,873.96
Current Liabilities..... (Note # 4)	1,419,922.25	1,112,554.77	1,033,424.60	965,882.90	906,476.00
Unadjusted Credits Other Than Reserves.....	266,572.11	214,630.58	189,937.67	187,080.54	187,424.18
Reserves..... (Note # 5)	2,910,147.55	2,708,634.76	2,377,707.58	1,090,412.16	1,274,500.31
Profit and Loss.....	4,031,605.10	3,696,589.93	3,433,293.28	3,359,647.45	3,268,770.22
Total Liabilities and Other Credits.....	\$46,247,592.19	\$45,746,930.46	\$45,019,684.05	\$43,706,573.84	\$43,558,494.67

[fol. 325]

Market Street Railway Company
Notes on Balance Sheet Accounts

	December 31, 1938	December 31, 1939	December 31, 1940	December 31, 1941	December 31, 1942
Note # 1					
Current Assets					
Cash.....	\$209,789.46	\$185,518.23	\$129,621.86	\$242,075.58	\$1,247,673.30
Workmen's compensation insurance deposit.....	20,040.31	30,709.94	30,709.94	30,709.94	38,709.94
Indemnity bond deposits.....	46,356.03	9,895.00	22,460.00	4,180.00	5,558.00
Revolving funds.....	3,550.00	2,600.00	2,600.00	2,650.00	2,650.00
Accounts receivable.....	28,350.72	42,385.07	22,682.85	24,744.79	32,338.86
Conductor's shorts and overs.....	138.60	123.69	145.75	273.24	334.70
Accounts receivable in transit.....	11.07		4.83		
Employees' loans.....	970.00	1,151.25	1,060.00	629.00	108.75
The California Oregon Power Company.....	114.50	10.00	70.09	69.21	53.50
California Pacific Title & Trust Company.....			500.00	500.00	500.00
Materials and supplies.....	428,302.84	264,054.42	254,308.08	256,296.74	240,707.70
Interest and dividends receivable.....	153.23	249.02	237.00	237.07	242.46
Accrued pole rentals.....	2,942.07	2,921.60	2,879.32	2,925.60	2,827.82
	<u>\$740,718.83</u>	<u>\$539,618.22</u>	<u>\$467,279.72</u>	<u>\$565,291.17</u>	<u>\$1,571,705.03</u>
Note # 2					
Capital Stock					
Common.....	\$10,647,400.00	\$10,647,400.00	\$10,647,400.00	\$10,647,400.00	\$10,647,400.00
Prior Preference Cumulative 6%.....	11,618,500.00	11,618,500.00	11,618,500.00	11,618,500.00	11,618,500.00
Preferred Cumulative 6%.....	4,986,850.00	4,986,850.00	4,986,850.00	4,986,850.00	4,986,850.00
Second Preferred Noncumulative 6%.....	4,673,700.00	4,673,700.00	4,673,700.00	4,673,700.00	4,673,700.00
Total Capital Stock Outstanding.....	<u>\$31,926,450.00</u>	<u>\$31,926,450.00</u>	<u>\$31,926,450.00</u>	<u>\$31,926,450.00</u>	<u>\$31,926,450.00</u>
Note # 3					
Long Term Debt					
Bonds					
Market Street Railway Co. 7% Bonds—Actually or nominally outstanding.....	\$7,114,500.00	\$7,078,500.00	\$2,361,500.00	\$2,361,500.00	\$2,361,500.00
Less: Bonds held in sinking fund.....	2,361,500.00	2,361,500.00	2,361,500.00	2,361,500.00	2,361,500.00
Actually outstanding.....	<u>\$4,753,000.00</u>	<u>\$4,717,000.00</u>	<u>\$.....</u>	<u>\$.....</u>	<u>\$.....</u>
First Mortgage Sinking Fund 5% Gold Bonds					
Actually or nominally outstanding.....	\$.....	\$.....	\$4,618,000.00	\$4,538,000.00	\$4,537,500.00
Less: Bonds held in sinking fund.....			71,000.00	197,000.00	320,000.00
Actually outstanding.....	<u>\$.....</u>	<u>\$.....</u>	<u>\$4,547,000.00</u>	<u>\$4,341,000.00</u>	<u>\$4,217,500.00</u>
Total bonds outstanding.....	<u>4,753,000.00</u>	<u>4,717,000.00</u>	<u>4,547,000.00</u>	<u>4,341,000.00</u>	<u>4,217,000.00</u>
Equipment Notes.....	46,439.00	433,111.41	539,293.30	828,999.14	735,748.28
Nonnegotiable debt to affiliated company—Standard Gas and Electric Company.....	893,456.18	937,959.01	972,577.62	1,007,101.65	1,041,625.68
Total Long Term Debt.....	<u>\$5,692,895.18</u>	<u>\$6,088,070.42</u>	<u>\$6,058,870.92</u>	<u>\$6,177,100.79</u>	<u>\$5,994,873.96</u>

[fol. 326]

Market Street Railway Company
Notes on Balance Sheet Accounts

	December 31, 1938	December 31, 1939	December 31, 1940	December 31, 1941	December 31, 1942
Note #4					
Current Liabilities					
Loans and notes payable—Bank loans	\$465,000.00	\$300,000.00	\$297,000.00	\$291,000.00	\$285,000.00
Loans and notes payable—Other	14,688.00				
Audited accounts payable—P.G. & E.	671,630.82	548,877.43	475,179.95	454,314.91	375,509.52
Audited accounts and wages payable—Other	157,681.66	158,251.94	176,093.93	132,385.25	161,264.55
Dividends payable	550.50	550.50	550.50	550.50	550.50
Matured interest on 7% bonds unpaid (Coups. 1 to 64)	94,823.75	92,233.75	5,005.00	3,955.00	3,456.25
Matured interest on 5% bonds unpaid (Coups. 65 to 75)			68,656.25	73,162.50	72,943.75
Bond interest accrued—not due			714.00	1,467.42	1,305.28
General interest accrued	10,333.12	7,913.65	7,528.91	7,873.12	4,912.09
Taxes assumed on bond interest	4,670.17	4,727.50	2,418.43	96.65	69.02
Federal taxes withheld on 5% bonds			277.63	1,077.55	1,465.04
Improvement assessments	544.23				
Total Current Liabilities	\$1,419,922.25	\$1,112,554.77	\$1,033,424.60	\$965,882.90	\$906,476.00
Note #5					
Reserves					
Reserve for depreciation (accumulated totals)					
Accruals recorded on books	\$7,902,269.07	\$8,402,269.07	\$8,902,269.07	\$9,402,269.07	\$9,902,269.07
Salvage	839,417.77	872,735.68	972,925.90	1,093,899.74	1,162,767.79
Retirements	*5,680,090.74	*6,385,010.93	*7,277,193.63	*9,161,422.57	*9,569,160.29
Removal cost	*302,591.52	*328,332.18	*369,035.69	*409,852.95	*471,989.86
Balance	2,759,004.58	2,561,661.64	2,228,965.65	924,893.29	1,023,886.71
Reserve for injuries and damages		17,431.31	19,200.12	35,977.06	121,071.79
Reserve for legal expense	142,405.07	129,541.81	129,541.81	129,541.81	129,541.81
Reserve for cable replacements	8,737.90				
Total Reserves	\$2,910,147.55	\$2,708,634.76	\$2,377,707.58	\$1,090,412.16	\$1,274,500.31

* Red figures.

Market Street Railway Company
Analysis of Profit and Loss Account

Years Ending December 31st,

	1938	1939	1940	1941	1942
Balance—Beginning of Year	\$4,658,088.80	\$4,031,605.10	\$3,696,589.93	\$3,433,293.28	\$3,359,647.45
Credits:					
Transfers from income account	\$4,174.86	\$295,049.54	\$234,189.87	\$385,190.00	\$1,254,478.07
Profit on bonds purchased for sinking funds	25,396.25	16,986.25	55,113.00	49,919.50	13,516.50
Profit on bonds purchased for treasury					1,382.50
Profit on sale of property		570.90			
Recovery from sale or use of one man car equipment which was written off to profit and loss in 1939			2,002.81	5,037.25	323.20
Refund of portion of 1940 subscription to Golden Gate International Exposition				787.50	
Adjustment due to write down of liability for unredeemed tickets					19,000.00
Refund of 2/10ths of 1% on State Unemployment Insurance tax for six months ending December 31, 1941					3,448.04
Difference between recorded value and amount received on surrender of \$5,000 par value of Western Women's Club bonds	111.50				
Refund of excess state license fees on coaches for 1940				43.20	
Total Credits	\$29,682.61	\$312,606.69	\$291,305.68	\$440,977.45	\$1,292,148.31
Debits:					
Depreciation of road and equipment	\$500,000.00	\$500,000.00	\$ 500,000.00	\$500,000.00	\$500,000.00
Loss on sale of treasury bonds				5,898.60	
Unamortized discount on bonds purchased for sinking funds	2,455.84	120.99	53.96		
Loss on sale of property	9,041.72	10,104.83	52,404.97	8,062.10	
Write-off of uncollectible accounts receivable	395.29		1,355.03	661.58	
Write-off obsolete stores	29,718.19				
Difference between recorded value of 135 shares of capital stock of South San Francisco Railroad & Power Co. and property received in exchange for stock	2,665.95				
To cancel open account and note liability of South San Francisco Railroad & Power Co.	111,853.47				
Loss on sale of one man car equipment		9,632.00			
Write-off value of one man car equipment included in Dec., 1939 physical inventory		126,154.44			
Penalty for delinquent filing of Federal Social Security Tax return for 1938		1,609.60			
Adjustment of interest on Standard Gas and Electric Co. open account			788.37		
Adjustment of prior years liability for Federal Old Age Benefits Tax					119.94
Forward	\$656,130.46	\$647,621.86	\$554,602.33	\$514,622.28	\$500,119.94

Market Street Railway Company
Analysis of Profit and Loss Account

Years Ending December 31st,

	1938	1939	1940	1941	1942
Debits:					
Forward.....	\$656,130.46	\$647,621.86	\$554,602.33	\$514,622.28	\$500,119.94
Estimated undepreciated value of road and equipment retired.....					882,905.60
Miscellaneous debits of less than \$25 each.....	35.85			1.00	
Total Debits.....	\$656,166.31	\$647,621.86	\$554,602.33	\$514,623.28	\$1,383,025.54
Excess of Debits Over Credits.....	\$626,483.70	\$335,015.17	\$263,296.65	\$73,645.83	\$90,877.23
Balance—End of Year.....	\$4,031,605.10	\$3,696,589.93	\$3,433,293.28	\$3,359,647.45	\$3,268,770.22

[fol. 329]

Comparative Income Statement

Operating Income					
Railway operating revenues.....	\$6,474,502.29	\$6,436,316.13	\$6,068,623.67	\$6,062,673.99	\$7,574,541.41
Railway operating expenses†.....	5,582,736.6	5,273,237.53	5,065,438.70	4,936,328.79	5,579,127.09
Net revenue—Railway operations.....	\$891,765.83	\$1,163,078.60	\$1,003,184.97	\$1,126,345.20	\$1,995,414.32
Taxes assignable to railway operations.....	432,000.00	424,000.00	416,000.00	416,000.00	425,500.00
Operating income.....	\$459,765.83	\$739,078.60	\$587,184.97	\$710,345.20	\$1,569,914.32
Nonoperating Income					
Miscellaneous rent income.....	\$6,495.75	\$5,514.06	\$4,723.29	\$5,942.96	\$6,300.33
Income from funded securities.....	608.78	645.44	884.23	896.32	900.49
Income from unfunded securities and accounts.....	3,550.16	601.26	82.40	419.16	26.55
Income from sinking funds.....	31.43	2.43	6.57	6.89	5.11
Miscellaneous income.....	154.27	216.17	23.55	1,002.01	279.14
Total nonoperating income.....	\$10,840.39	\$6,979.36	\$5,720.04	\$8,267.34	\$7,511.62
Gross income.....	\$470,606.22	\$746,057.96	\$592,905.01	\$718,612.54	\$1,577,425.94
Deductions from Gross Income					
Interest on funded debt.....	\$338,244.79	\$332,901.73	\$270,319.13	\$249,301.82	\$241,535.28
Interest on unfunded debt.....	103,194.52	93,452.77	71,775.27	69,250.24	66,286.75
Amortization of discount on funded debt.....	21,065.26	20,712.75	14,927.48	14,763.45	14,996.80
Miscellaneous debits.....	3,926.79	3,941.17	1,693.26	107.03	129.04
Total deductions from gross income.....	\$466,431.36	\$451,008.42	\$358,715.14	\$333,422.54	\$322,947.87
Transferred to profit and loss.....	\$4,174.86	\$295,049.54	\$234,189.87	\$385,190.00	\$1,254,478.07

[fol. 330]

Operating Revenues

Passenger Revenue					
Cash fares.....	\$4,640,853.90	\$4,850,226.85	\$4,857,300.06	\$4,949,276.17	\$6,245,095.29
Ticket revenue.....	209,968.53	197,964.06	176,039.59	167,885.20	169,547.10
Special car revenue.....	295.00	320.00	3,753.50	13,577.05	20,695.49
Token revenue.....	1,564,935.83	1,318,804.81	978,515.16	893,596.06	1,100,995.00
Total passenger revenue.....	\$6,416,053.26	\$6,367,315.72	\$6,015,608.31	\$6,024,334.48	\$7,535,732.88
Other Operating Revenue					
Station and car privileges.....	\$45,995.60	\$56,539.33	\$38,409.14	\$22,462.93	\$23,219.13
Rent of tracks and facilities.....			2,784.08	4,128.52	4,057.09
Rent of equipment.....	2,949.46	1,743.91	1,383.09	1,176.13	1,367.01
Rent of buildings and other property.....	9,503.97	10,717.17	10,439.05	10,571.93	10,165.30
Total other operating revenue.....	\$58,449.03	\$69,000.41	\$53,015.36	\$38,339.51	\$38,808.53
Total operating revenue.....	\$6,474,502.29	\$6,436,316.13	\$6,068,623.67	\$6,062,673.99	\$7,574,541.41

† Depreciation expense not included in operating expenses. For each of the five years the company charged \$500,000 to profit and loss on account of depreciation.

[fol. 331]

Market Street Railway Company

Operating Expenses

Years Ending December 31st,

	1938	1939	1940	1941	1942
Maintenance					
Maintenance of Track					
Superintendence of track	\$36,544.38	\$36,501.21	\$34,049.87	\$27,402.48	\$19,914.99
Ballast	2,296.28	1,339.88	488.68	66.72	113.16
Ties	2,215.48	917.96	320.16	549.45	721.82
Rails	3,343.51	1,653.98	1,742.27	257.22	*1,695.03
Rail fastenings and joints	28,237.52	20,076.11	14,308.15	8,764.48	9,248.08
Special work	1,750.51	1,034.61	8,868.39	138.29	550.61
Underground construction	1,292.19	1,470.86	1,012.59	1,255.19	1,094.28
Track and roadway labor	172,636.80	135,812.10	123,305.56	98,963.84	106,032.04
Miscellaneous track and roadway expense	9,387.70	4,812.14	5,258.23	3,906.68	4,641.63
Paving	70,189.13	47,919.51	51,455.25	31,616.43	42,720.25
Cleaning and sanding tracks	21,066.26	19,476.55	19,268.01	17,017.82	15,996.47
Bridges, trestles and culverts	108.25	557.85	86.36		39.71
Crossings, fences and signs	300.96	416.40	194.44	292.19	18.22
Signal and interlocking apparatus	1,830.15	2,088.07	1,722.17	1,704.42	1,850.81
Total maintenance of track	\$351,199.12	\$274,077.23	\$262,080.43	\$191,935.21	\$201,247.04
Maintenance of line					
Superintendence of overhead lines	\$9,613.04	\$9,837.95	\$9,816.91	\$7,982.38	\$4,532.08
Poles and fixtures	19,289.35	15,860.49	11,894.29	7,874.67	3,049.57
Overhead feeders	1,665.60	2,062.14	1,002.66	1,423.10	*277.77
Underground feeders	48.10	69.27	224.81	312.98	362.93
Track bonbing	2,967.21	1,833.03	1,529.36	289.59	627.34
Overhead trolley	34,434.33	33,580.46	30,459.18	21,820.81	18,709.32
Total maintenance of line	\$68,017.63	\$63,243.34	\$54,927.21	\$39,703.53	\$27,003.47
Maintenance of structures					
Superintendence of structures	\$2,527.85	\$2,591.04	\$1,869.91	\$1,834.03	\$1,868.81
Carhouses	6,245.17	3,796.10	6,850.02	6,557.32	10,558.97
Shops	1,713.52	1,371.15	2,678.06	1,727.26	869.15
Stations and waiting rooms	430.53	272.68	272.57	662.50	346.72
Miscellaneous	399.25	4,500.36	751.64	3,237.69	1,265.02
Total maintenance of structures	\$11,216.32	\$12,621.33	\$12,422.20	\$14,018.80	\$14,848.67
Maintenance of equipment					
Superintendence of equipment	\$14,283.91	\$14,334.51	\$16,826.08	\$18,272.77	\$18,136.78
Passenger cars and coaches	194,894.18	147,195.00	171,548.36	216,387.81	289,628.69
Service cars	692.96	305.31	557.97	374.37	98.49
Electrical equipment—all cars	138,728.50	107,831.09	102,365.62	95,062.50	114,980.74
Shop equipment	3,916.89	4,848.93	6,515.48	4,977.08	3,169.48
Shop expense	21,488.40	23,767.90	23,690.77	26,390.03	26,875.66
Autos	11,464.20	9,023.17	7,742.28	6,160.83	8,257.52
Total maintenance of equipment	\$385,469.04	\$307,305.91	\$329,246.56	\$367,625.39	\$461,147.36

* Red figure.

Market Street Railway Company

Operating Expenses

Years Ending December 31st,

	1938	1939	1940	1941	1942
Maintenance					
Maintenance of power plant equipment					
Superintendence of power plant equipment	\$3,052.75	\$3,028.58	\$3,072.57	\$2,831.17	\$2,698.90
Power plant buildings	97.86	631.11	113.26	167.80	94.41
Power plant equipment	544.22	524.16	465.85	327.60	569.87
Cables	56,405.80	44,207.93	46,243.80	46,131.39	39,517.88
Fillmore hill expense	1,676.60	1,373.18	792.02	245.07	
Substation equipment	2,992.39	4,231.05	5,633.25	4,627.56	4,906.06
Total maintenance of power plant equipment	\$64,769.62	\$53,996.01	\$56,320.75	\$54,330.59	\$47,787.12
Gross expense—maintenance	\$880,771.73	\$711,243.82	\$714,996.85	\$667,613.52	\$752,033.66
Operating					
Operating power plant					
Superintendence of power operations	\$4,902.50	\$4,898.42	\$4,893.06	\$4,564.19	\$4,230.42
Wages of power plant employees	11,752.59	10,260.09	8,568.75	7,155.97	7,924.78
Fuel for power	16,771.38	26,784.78	107,431.05	181,165.44	230,724.81
Lubricants for power	1,293.81	1,559.54	5,074.86	14,277.20	24,930.62
Miscellaneous power plant supplies	578.52	693.76	550.10	733.15	571.89
Wages of substation employees	53,766.99	50,873.79	46,914.97	46,940.96	53,511.52
Substation supplies	2,705.96	2,467.38	2,113.17	2,183.77	1,980.15
Power purchased	898,557.05	756,636.91	654,149.02	585,175.66	570,498.63
Total operating power plant	\$990,328.80	\$854,174.67	\$829,694.98	\$842,196.34	\$894,372.82
Conducting transportation					
Superintendence of transportation	\$214,251.34	\$198,075.21	\$198,010.73	\$184,116.57	\$196,083.37
Wages of platform men	2,363,750.94	2,423,843.79	2,348,333.34	2,312,673.34	2,610,918.74
Wages of misc. car service employees	26,721.30	22,972.57	22,819.39	11,748.80	9,357.57
Miscellaneous car service expense	26,824.81	25,005.02	26,083.78	24,284.40	24,361.31
Secret service	17,290.13	12,788.84	13,419.13	12,676.21	10,715.92
Wages of station employees	135.00	150.00	150.00		
Station expense	1,154.75	1,021.66	998.38	617.91	200.59
Wages of carhouse employees	218,858.64	203,212.26	204,489.15	199,724.22	224,963.52
Carhouse expense	5,716.64	5,064.87	5,850.97	5,065.22	5,680.47
Operation of signal apparatus	1,754.94	1,765.49	1,697.48	1,729.37	1,920.40
Operation of telephone lines	8,860.43	8,856.65	8,989.41	8,320.44	8,275.45
Other transportation expense	8,415.07	7,175.59	7,870.51	8,011.31	8,823.69
Total conducting transportation	\$2,893,733.99	\$2,909,931.95	\$2,838,712.27	\$2,768,967.79	\$3,101,301.03
Traffic					
Superintendence and solicitation			\$10,524.38	\$7,191.77	\$387.50
Advertising	\$1,092.74	\$50,410.50	5,998.65	1,983.19	1,309.32
Salaries of traffic department	12,098.74	11,663.73			
Expenses of traffic department	9,624.55	4,975.56			
Miscellaneous traffic expenses				206.46	56.30
Total traffic	\$22,816.03	\$67,049.79	\$16,523.03	\$9,381.42	\$1,753.12

[fol. 333]

Market Street Railway Company

Operating Expenses

Years Ending December 31st,

	1938	1939	1940	1941	1942
Operating					
General and miscellaneous					
Salaries and expenses—general officers	\$59,711.12	\$59,523.13	\$59,754.68	\$60,180.90	\$60,800.20
Salaries and expenses—general clerks	75,121.32	68,429.55	65,108.08	60,348.89	62,045.91
General office supplies and expense	43,939.63	45,541.36	44,847.18	41,592.36	38,240.06
Law expense	45,253.19	57,811.34	51,162.95	50,800.63	45,478.00
Relief department expense	2,325.44	161.85	1,111.38*	10,368.88	5,935.583
Pensions and gratuities	44,251.56	43,660.92	33,194.81	31,476.34	29,103.46
Miscellaneous general expense	55,749.15	38,995.09	36,020.33	32,519.56	59,044.05
Valuation expense	4,800.00	4,800.00	4,695.30	2,411.35	2,456.25
Injuries and damages	349,258.91	310,000.00	267,500.00	260,580.00	407,500.00
Insurance	19,771.13	18,248.74	16,432.88	16,103.66	20,387.96
Stationery and printing	27,896.44	21,882.19	23,763.25	22,537.72	30,983.36
Stores expense	21,084.24	18,378.07	22,213.42	22,610.71	28,978.72
Garage expense	38,301.31	29,420.67	28,320.86	26,457.23	29,794.92
Rent of tracks and facilities	12,000.00	16,626.98	17,065.49	18,190.59	16,756.46
Total general and miscellaneous	\$799,463.44	\$733,479.89	\$668,967.85	\$656,098.82	\$837,505.18
Gross expense—operating	\$4,706,342.26	\$4,564,636.30	\$4,353,898.13	\$4,276,644.37	\$4,834,932.15
Total expense	\$5,587,113.99	\$5,275,880.12	\$5,068,894.98	\$4,944,257.89	\$5,586,965.81
Transportation for Investment	4,377.53*	2,642.59*	3,456.28*	7,929.10*	7,838.72*
Net railway operating expense	\$5,582,736.46	\$5,273,237.53	\$5,065,438.70	\$4,936,328.79	\$5,579,127.09

* Red figure.

[fol. 334]

CASE NO. 4680—EXHIBIT NO. 3
Witness Hall—Date May 10, 1943—Com. En Banc

Market Street Railway Company
Revenue Rolling Stock as of 5/1/43

Type of Car	Year Built	Total Revenue Street Cars Owned			In Service			Out of Service		
		No. Cars	Serial Numbers	Seat Cap.	No. Cars	Serial Numbers	Seat Cap.	No. Cars	Serial Numbers	Seat Cap.
Electric Streetcars:										
P.A.Y.E. Drop Plat.	1911	79	101-122	46	78	101-122	46	1	180	46
"			124-180			124-179				
"	1911	65	201-265	50	64	201-264	50	1	265	50
1-Man/2-Man	1913	20	266-285	44	20	266-285	44			
"	1924-5	20	286-305	44	20	286-305	44			
P.A.Y.E.	1923	148	778-923	50	89	Various	50	59	Various	50
"	1930		942-943							
P.A.Y.E.	1931	68	924-941	50	68	924-941	50			
"	1932		944-988			944-988				
"	1933		990-994			990-994				
P.A.Y.E.	1903	18	1225-1238	40	18	1225-1238	40			
"	1922		1241-1244			1241-1244				
1-Man	1918	2	735-736	40				2	735-736	40
"	1935									
1-Man	1927	10	740-749	40				10	740-749	40
"	1936									
1-Man	1933	1	989	44	1	989	44			
P.A.Y.E.	1907	9	1553, 1572	44	9	1553, 1572	44			
"			1583, 1595			1583, 1595				
"			1599, 1715			1599, 1715				
"			1716, 1722			1716, 1722				
"			1731			1731				
Trolley Coaches	1935-6	9	51-59	37	9	51-59	37			
Cable Cars:										
Sacramento St.	1907	12	15-26	34				12	15-26	34
Powell St.	1893-1923	27	501-527	29	27	501-527	29			
Total Streetcars		440			367			73		
Total Trolley Coaches		9			9					
Total Cable Cars		39			27			12		

[fol. 335]

CASE No. 4680—EXHIBIT No. 4

Witness Hall—Date May 10, 1943—Com. En Banc

Market Street Railway

Summary of Causes of "Turn-In" of Street Cars
March and April, 1943.

	Electrical and Motor Repairs		Mechanical Repairs		Accidents		Total	
	March	April	March	April	March	April	March	April
Carbarn								
Geneva Avenue....	58	19	31	14	4	1	93	34
Haight Street.....	18	25	3	0	0	5	21	30
McAllister.....	43	40	19	15	1	5	63	60
Sutro.....	27	25	13	9	10	4	50	38
Turk and Fillmore..	58	58	14	11	5	2	77	71
Total.....	204	167	80	49	20	17	304	233

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CASE No. 4680—EXHIBIT No. 5

Witness Hall—Date May 10, 1943—Com. En Banc

Market Street Railway

Operative Motor Coach Equipment in Service May 1, 1943

Builder	Year Model	No. of Coaches	Serial Numbers	Seating Capacity	Type of Motors
General Motors.....	1932	1*	21	17	Gas
Twin Coach.....	1937-8	4	25-28	23	Gas
Yellow Coach.....	1939	12	30-41	25	Gas
Yellow Coach.....	1939-1940	17	60-76	27	Gas
Yellow Coach.....	1939-1940	20	101-120	36	Gas
Yellow Coach.....	1940	2	121-122	36	Gas
Yellow Coach.....	1940	7	201-207	32	Gas
Yellow Coach.....	1940	11	301-311	36	Diesel
Yellow Coach.....	1941	9	151-159	36	Gas
Yellow Coach.....	1941	30	401-430	37	Gas
Yellow Coach.....	1942	6	160-165	36	Gas
Yellow Coach.....	1942	3	431-433	37	Gas
Yellow Coach.....	1942	1	166	36	Gas
Total.....		123			

* Allocated solely to Civilian Defense.

[fol. 337]

CASE NO. 4680—EXHIBIT NO. 6
 Witness Hall—Date May 10, 1943—Com. En Banc
 Market Street Railway Company
 Traffic Check

Summary of Travel Characteristics at Selected Locations Including Municipal Railway Lines at Market Street at Van Ness

Item	April 29 & 30, 1943				Dec. 9 & 10, 1942			
	Units	Seats Available	Passengers	Load Factor	Units	Seats Available	Passengers	Load Factor
Inbound Morning Trips*								
Market St. at Van Ness—Municipal Rwy.—Rail	169	8,527	15,342	1.8	152	7,544	16,801	2.2
Market St. at Van Ness—Market St. Rwy.—Rail	88	4,150	6,325	1.5	93	4,360	6,790	1.6
Mission St. at 9th—Market St. Rwy.—Rail	67	3,064	3,919	1.3	68	3,234	3,948	1.2
Mission St. at 9th—Market St. Rwy.—M.C.	13	428	509	1.2	38	1,169	1,406	1.2
3rd St. at Mission—Market St. Rwy.—Rail	22	1,064	1,515	1.4	15	732	1,124	1.5
3rd St. at Mission—Market St. Rwy.—M.C.	43	1,556	1,761	1.1	69	2,537	3,108	1.2
16th St. at Potrero—Market St. Rwy.—Rail	53	2,614	3,948	1.5				
McAllister at Van Ness—Market St. Rwy.—Rail	35	1,690	2,735	1.6	32	1,568	2,761	1.8
Sutter at Powell—Market St. Rwy.—Rail	59	2,950	4,963	1.7	58	2,900	4,744	1.6
Total	549	26,043	41,017	1.6				
Total Excl. 16th & Potrero	496	23,429	37,069	1.6	525	24,044	40,682	1.7
Outbound Afternoon Trips**								
Market St. at Van Ness—Municipal Rwy.—Rail	172	8,666	17,042	2.0	167	8,394	20,224	2.4
Market St. at Van Ness—Market St. Rwy.—Rail	110	5,178	8,422	1.6	107	5,064	8,809	1.7
Mission St. at 9th—Market St. Rwy.—Rail	102	4,702	7,324	1.6	95	4,430	8,012	1.8
Mission St. at 9th—Market St. Rwy.—M.C.	7	236	411	1.7	31	929	1,367	1.5
3rd St. at Market—Market St. Rwy.—Rail	15	714	520	1.7	15	714	831	1.2
3rd St. at Market—Market St. Rwy.—M.C.	36	1,261	1,860	1.5	49	1,803	2,910	1.6
16th St. at Potrero—Market St. Rwy.—Rail	39	2,188	3,224	1.5				
McAllister at Van Ness—Market St. Rwy.—Rail	40	1,940	3,673	1.9	41	2,040	4,198	2.1
Sutter at Powell—Market St. Rwy.—Rail	78	3,900	5,965	1.5	70	3,500	6,356	1.8
Total	599	28,785	48,441	1.7				
Total Excl. 16th & Potrero	560	26,597	45,217	1.7	575	26,874	52,707	2.0
Outbound Morning Trips*								
3rd St. at Mission—Market St. Rwy.—M.C.	47	1,729	2,323	1.3	80	2,920	3,289	1.1
Inbound Afternoon Trips**								
3rd St. at Market St.—Market St. Rwy.—M.C.	35	1,231	1,854	1.5	49	1,774	3,103	1.7

* From 6:40 to 8:59 a.m. Incl.

** From 4:00 to 6:39 p.m. Incl.

[fol. 338]

CASE 4680—EXHIBIT No. 8

Witness Cahill. Date 7/15/43. Com. Ceb.

MARKET STREET RAILWAY COMPANY

Copied from minutes of September 24, 1942 regular directors' meeting (Book 5 page 20)

Sale of the Operative Properties of Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he has agreed with the Mayor and other City officials, as well as the Board of Supervisors, to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, and that a charter amendment for the purpose of raising such sum by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at the next general election on November 3, 1942. The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company.

Whereupon, on motion of Director Scott, duly seconded by Director Lienthal, the following resolution was adopted:

Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash be, and the same are hereby, ratified, approved and confirmed; and it is

Further Resolved, That the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash.

[fol. 339] CASE 4680—EXHIBIT No. 9

Witness Cahill. Date 7/15/43. Com. C e B

Market Street Railway Company

Copied from Minutes of March 25, 1943 Regular Directors Meeting (Book 5, Page 45)

Sale of the Operative Properties of the Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he had agreed with the Mayor and other city officials, as well as the Board of Supervisors, to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20th, 1943. The President also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

Whereupon, On motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted:

Resolved, That the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, [fol. 340] be, and the same are hereby, ratified, approved and confirmed; and it is

Further Resolved, That the officers of the Market Street Railway Company be and they are hereby authorized and

directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash.

[fol. 341] APP. CASE 4680—EXHIBIT No. 10

Witness Chas. W. Mors. Date July 15/1943

California Railroad Commission's

Transportation Department

Research Division

Report on the Results of Operation of Market Street
Railway Company, 1922-1942

Case No. 4680

San Francisco, California

July 15, 1943

[fol. 342] California Railroad Commission Inter-Office
Correspondence, San Francisco

July 15, 1943.

Case No. 4680

Mr. Warren K. Brown, Director of Transportation and
Mr. J. G. Hunter, Assistant Director of Transportation
and Chief Engineer.

Subject: Report on the Results of Operation of Market
Street Railway Company

There is submitted herewith a brief report on the results
of operation of Market Street Railway Company, prepared
by the Research Division in accordance with your instructions
for presentation in connection with Case No. 4680.

The report shows trends of revenues, operating expenses,
taxes and depreciation over the period of twenty-two years
during which the properties have been operated

as Market Street Railway Company. The trends of operating expenses, and particularly of maintenance expenses, are compared with the trends of the Municipal Railway and the Los Angeles Railway.

Mr. T. J. Canty of this division prepared the chapter on operating revenue and Mr. H. C. Hanson compiled most of the data on history and present operations. Both assisted in the general preparation of the report.

Mr. T. A. Hopkins, loaned by the Valuation Division of the Public Utilities Department, brought the 1920 historical valuation up to date and made the estimate of straight-line depreciation expense.

Respectfully submitted, Charles W. Mors, Transportation Research Engineer.

[fol. 343] California Railroad Commission, Transportation Department, Research Division

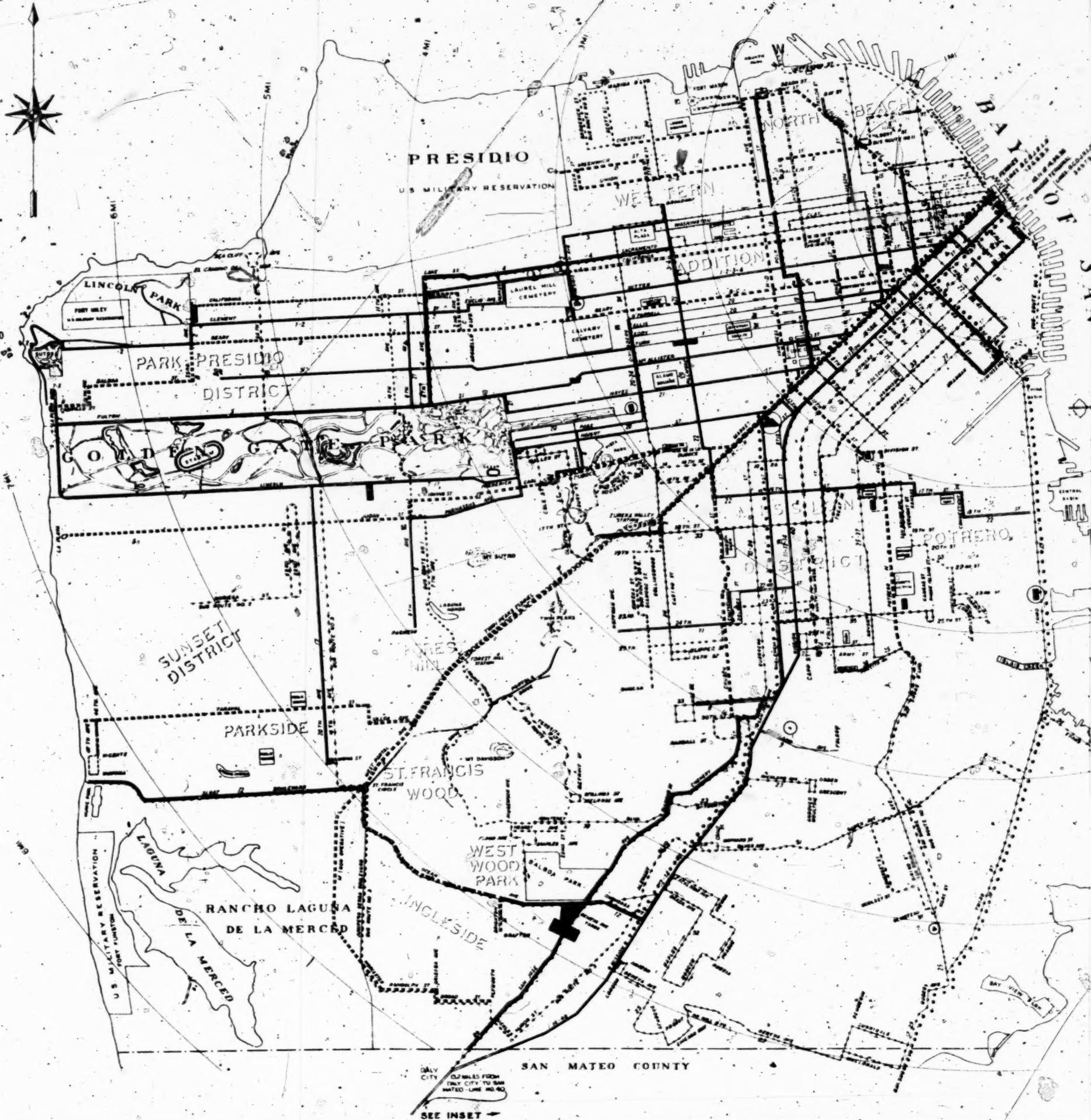
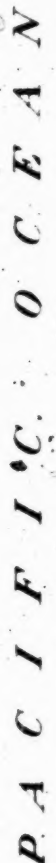
Report on the Results of Operation of Market Street Railway Company, 1922-1942

Case No. 4680

San Francisco, California

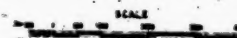
July 15, 1943

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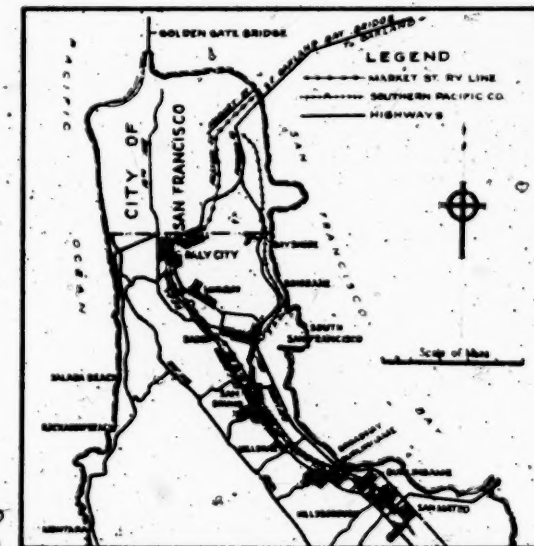


TRANSPORTATION MAP OF THE CITY & COUNTY OF SAN FRANCISCO

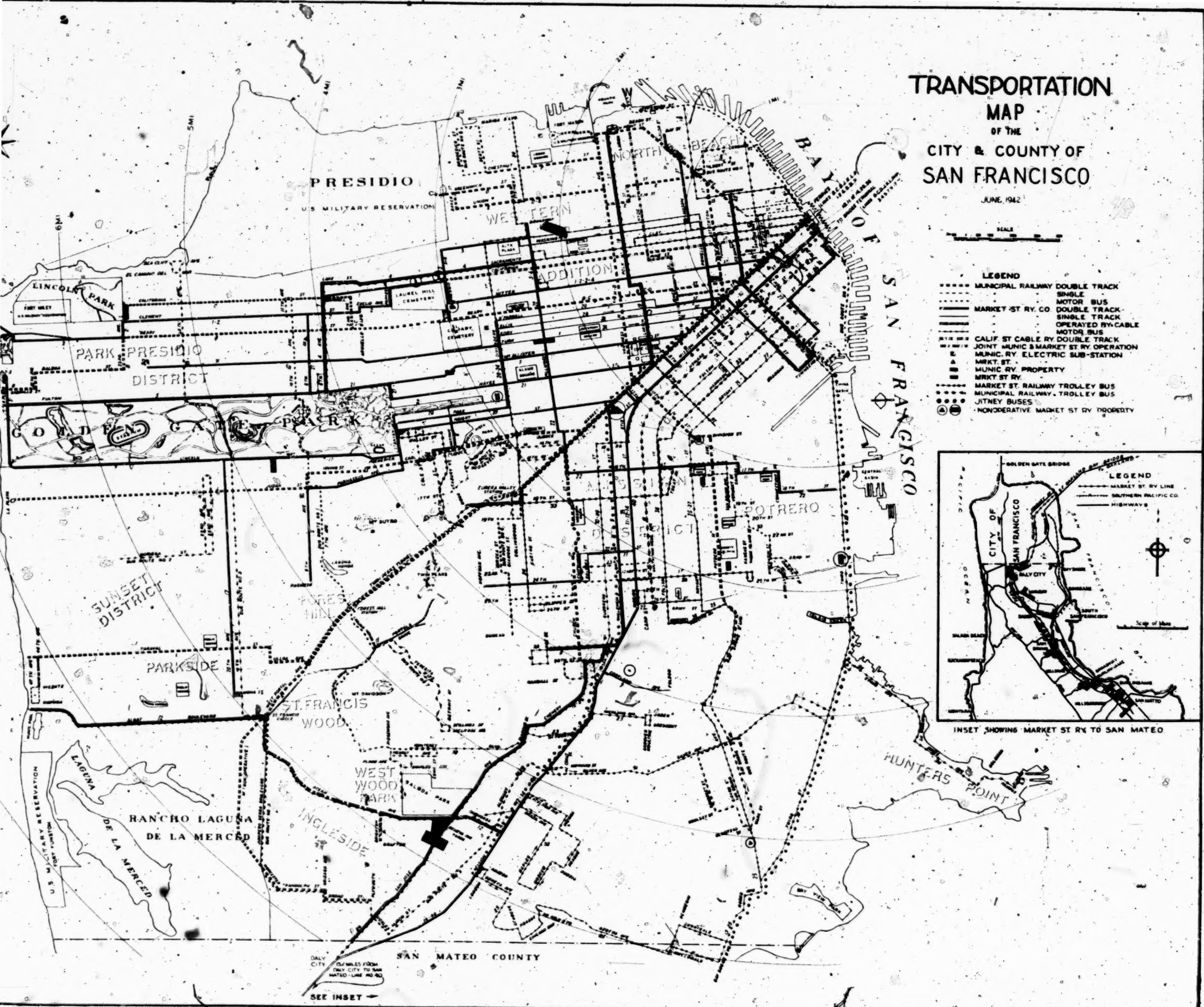
JUNE, 1942



- LEGEND**
- MUNICIPAL RAILWAY DOUBLE TRACK
 - MUNICIPAL RAILWAY SINGLE TRACK
 - MOTOR BUS
 - MARKET ST. RY. CO. DOUBLE TRACK
 - MARKET ST. RY. CO. SINGLE TRACK
 - OPERATED BY CABLE
 - MOTOR BUS
 - CALIF. ST. CABLE RY. DOUBLE TRACK
 - JOINT MUNIC. & MARKET ST. RY. OPERATION
 - MUNIC. RY. ELECTRIC SUB-STATION
 - MKRT. ST.
 - MUNIC. RY. PROPERTY
 - MKRT. ST. RY.
 - MARKET ST. RAILWAY TROLLEY BUS
 - MUNICIPAL RAILWAY TROLLEY BUS
 - JITNEY BUSES
 - NONOPERATIVE MARKET ST. RY. PROPERTY



INSET SHOWING MARKET ST. RY. TO SAN MATEO



[fol. 345]

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Tables and chart indices appear at end of report.

CHAPTER I

INTRODUCTION

A. Purpose of Report

The purpose of this report is to present to the Commission a brief historical summary of the financial results of operation of Market Street Railway Company over the twenty-one years ended December 31, 1942, with particular reference to the last few years and with some consideration of results for the first few months of 1943.

B. Scope of Report

The report consists primarily of an analysis of the company's operating expenses and depreciation practices, including a comparison of operating expense trends with trends of the corresponding expenses in the San Francisco Municipal Railway and in the Los Angeles Railway Corporation.

Revenues are analyzed to determine the effect of recent fare increases and other factors upon the revenue and traffic of Market Street Railway, and upon the distribution of revenue and traffic between Market Street Railway and the Municipal Railway.

A section is devoted to discussion of the road and equipment account and another section to a brief analysis of taxes.

Pertinent information regarding the company's historical background, organization, financial control, and present operations are also included.

C. General Information

Market Street Railway Company furnishes urban transportation in the City and County of San Francisco by means of electric street car lines, cable car lines, motor coach lines, and an electric trolley coach line. It also operates an inter-urban electric car line from San Francisco to San Mateo. Much of the company's urban operation is in direct competition with the Municipal Railway, owned and operated by the city, and there is also some competition with the two cable lines of the California Street Cable Railroad Company. There is also jitney bus competition with certain lines of Market Street Railway, principally during the rush

[fol. 348] hours. The competition with the Municipal Railway is of particular importance since the Municipal Railway has maintained a 5-cent fare continuously while Market Street's fare has been increased in several steps since July 1937 from 5 cents to the present 7-cent fare.

A picture of the relative size of the Market Street Railway, Municipal Railway, and California Street Cable Railroad operations may be gained from the following comparative statistics for the year 1942.

Company	Passenger Revenue		Revenue Passengers	
	Amount	Per Cent	Number*	Per cent
Market Street Railway	\$7,535,732	58.5	111,402	50.7
Municipal Railway	4,849,788	37.7	98,490	44.9
California Street Cable R.R.	487,165	3.8	9,612	4.4
Total	\$12,872,685	100.0	219,504	100.0

*000 omitted.

The general offices of the Market Street Railway Company are located in the Holbrook Building at 58 Sutter Street, San Francisco.

D. Financial Control

The capital stock of Market Street Railway Company comprises four issues, all of \$100 par value and all having equal voting rights of one vote per share. There were 319,264½ shares of all issues outstanding as of December 31, 1942, distributed as follows:

Issue	Shares Outstanding December 31, 1942
Prior Preference	116,185
Preferred	49,868½
Second Preferred	46,737
Common	106,474
Total	319,264½

The ten largest stockholders and their respective holdings and voting power are shown by Table 1-1.

[fol. 349]

Table 1-1

I—Introduction

Market Street Railway Company

Ten Largest Stockholders as of December 31, 1942

Stockholder	Shares of Stock by Classes, December 31, 1942				Per Cent of total Voting Power
	Prior Preference	Preferred	2nd Preferred	Common	Total
Standard Gas & Electric Co., 231 So. La Salle St., Chicago	6,800	39,250	25,500	61,900	126,650
Carl M. Loeb, Rhoades & Co., 61 Broadway, New York City	2,828	3	6	12	6,821
Ladenburg, Thalman & Co., 25 Broad Street, New York City	5,320	700	1,106	2,000	6,634
J. S. Bache & Company, 42 Broadway, New York City	5,385			280	5,600
Dean Witter & Company, 15 Wall Street, New York City			115		5,500
Oscar Weiss, 25 Broad Street, New York City	4,718	400	1,750	2,580	4,730
Dominick & Dominick, 14 Wall Street, New York City	3,770	10	2		4,720
Josephthal & Company, 120 Broadway, New York City			110	190	4,080
Milton J. Levi, 111 New Montgomery St., San Francisco, Calif.	3,430				3,430
Merrill, Lynch, Pierce, Fenner and Beane, 70 Pine St., New York City	1,515			800	2,315
Total—10 Stockholders	33,766	40,363	28,589	67,762	170,480
Total Shares Outstanding	116,185	49,808½	46,737	106,474	319,264½
					53.4%

[fol. 350] While Standard Gas and Electric Company held less than a majority of the outstanding stock, the remaining shares are rather widely distributed in relatively small holdings.

No supervisory or managing interrelationship exists between Market Street Railway and Standard Gas and Electric Company.

Standard Gas and Electric Company is controlled by Standard Power and Light Company. Liquidation of the latter was ordered by the Securities and Exchange Commission on June 14, 1942, and hearings on the subject have continued up to the present time. The Byllesby interests no longer control Standard Power and Light Company.

Market Street Railway Company controls through stock ownership two inactive corporations:

Company	Extent of Control
San Francisco and San Mateo Electric Railway Company	100.00%
Sutro Railroad Company	99.88%

E. Organization

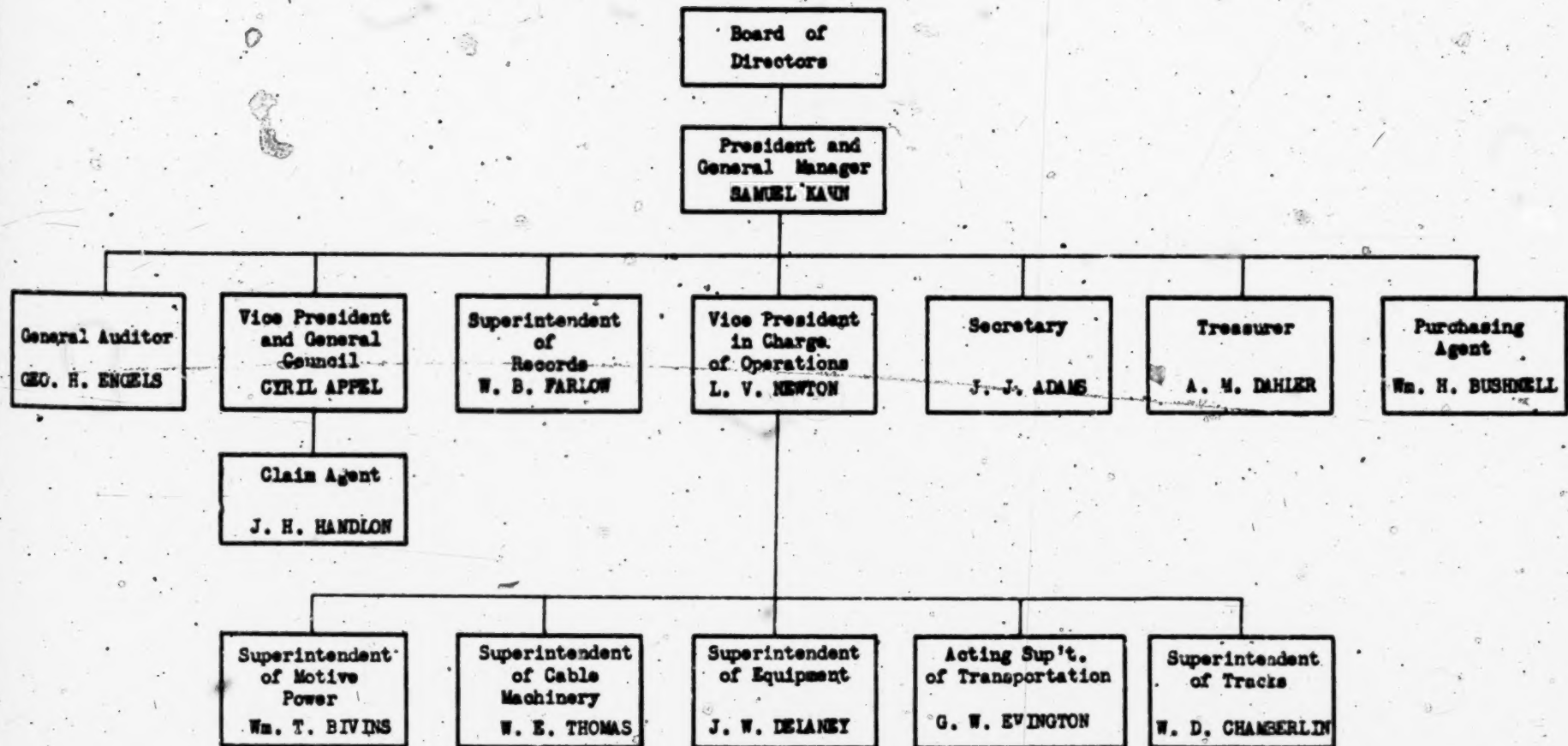
The general management organization of Market Street Railway Company as of June 30, 1943, is shown by Chart -1. The board of directors is made up of the following members:

Samual Kahn, 58 Sutter Street, San Francisco;
 A. L. Ehrman, 519 California Street, San Francisco;
 P. J. Fay, 465 California Street, San Francisco;
 H. S. Scott, 465 California Street, San Francisco;
 Cyril Appel, 58 Sutter Street, San Francisco;
 W. H. McCarthy, Post Office Building, San Francisco.

As of May 31, 1943, there were 1,909 employees on the Market Street Railway Company's payroll, exclusive of 6 persons to whom retainers are paid for medical and legal services. The employees were distributed among departments as follows:

(Here follows 1 photolithograph, side folio 351)

MARKET STREET RAILWAY COMPANY
GENERAL ADMINISTRATIVE AND OPERATING ORGANIZATION
AS OF JUNE 30, 1943



[fol. 352]

Department	Number of Employees
Officers	15
General Office	108
Transportation	73
Platform (including coach operators)	1,273
Engineering	92
Overhead Lines	17
Shops	277
Motive Power	24
Cable Machiners	13
Stores	17
Total	1,909

The total payroll for 1942 was \$3,880,744, an increase of 9.9 per cent over 1941. More than 96 per cent of the total payroll was charged to operation in each of the above years.

[fol. 353]

CHAPTER II

HISTORY AND PRESENT OPERATIONS

A—General History

1852-1873, Beginnings

Public transportation in San Francisco began with an omnibus service started in 1852, between the Post Office, then located at Clay and Kearny Streets, and the Mission Dolores, via Kearny, Third, and Mission Streets. The first Street railway in San Francisco, the Market Street-to-Mission Dolores Line, was officially opened on July 4, 1860.

1873-1891, Cable Cars

In 1873 the world's first cable line, the Clay Street Hill Railroad, was put into operation on Clay Street between Kearny and Leavenworth. The cable railroad was invented by A. S. Hallidie of San Francisco to meet local hilly conditions. The cable system of operating street railways proved to be a very practicable method and its use spread quickly to other localities.

Upon the adoption of the new State constitution in 1879 practically all street railway companies requested and were granted fifty-year franchises (This accounts for the large number of franchises which expired in 1929).

About this time a number of horse-drawn lines were converted to cable operation and a number of new companies entered the field, resulting in considerable expansion of San Francisco's street car system.

1891-1920, Electric Lines, Consolidations, Municipal Railway

Electric street railway service in San Francisco was inaugurated by the San Francisco and San Mateo Railroad Company in 1891, running between Steuart and Market Streets and the county line.

The Market Street Railway Company was incorporated October 11, 1893, and took over 11 of the 17 street car lines then being operated independently, namely:

- City Railroad Company.
- Market Street Cable Railway Company.
- Potrero and Bay View Railroad Company.
- Southern Heights and Visitation Railway Company.
- Park and Ocean Railroad Company.
- Market Street and Fairmont Railway Company
- [fol. 354] Ocean Beach Railroad Company.
- Central Railroad Company.
- The Omnibus Cable Company.
- The North Beach and Mission Railroad Company.
- Ferries and Cliff House Railroad Company.

It later acquired the properties of the Metropolitan Railway Company.

San Francisco's city charter, which became effective in 1900, declared in favor of municipal ownership of public utilities, but it provided that franchises could be granted to privately-owned street railway companies for a period not to exceed twenty-five years, at the end of which time all tracks and overhead work were to revert to the city at no cost.

The United Railroads of San Francisco was incorporated in 1902, taking over the properties of Market Street Railway Company and five other lines and bringing together under one control 229 miles of track, a large portion of which was cable operated. The United railroads suffered heavily in the San Francisco earthquake of 1906, many of the cable systems being damaged so much as to require rebuilding. A considerable reconstruction program was carried out between 1906 and 1910 and where feasible the

7
damaged cable lines were replaced by electric traction lines.

The San Francisco Municipal Railway System began operations on December 28, 1912, with a line on Geary Street from Kearny Street to 33rd Avenue, replacing the old Geary Street cable line. This system was expanded considerably in the next few years, particularly by the construction of lines to serve the Panama-Pacific Exposition.

1921, Reorganization, Market Street Railway

On April 1, 1921, the United Railroads of San Francisco was reorganized for the purpose of refinancing, Market Street Railway Company acquiring all of its property and certain other properties in the reorganization.

1925, Byllesby Control

The Byllesby interests gained control of Market Street Railway Company in 1925, through its subsidiary, The Standard Power and Light Company.

The Market Street Railway's first bus line began operation in September, 1925, as a small feeder line in the Excelsior District, and in April, 1926, a second line was added. The company operated six motor coaches at the end of 1928.

Cable railway service on Pacific Avenue from Polk Street to Divisadero Street was abandoned in 1929.

[fol. 353] 1931, 25-Year Operating Permit

Upon the expiration of certain franchises in November, 1929, some of the lines operated temporarily under sufferance by the city pending clarification of the franchise situation. In November, 1930, the voters of San Francisco adopted and the State Legislature ratified a charter amendment which permitted Market Street Railway to surrender its remaining franchises to the city and county in exchange for a 25-year operating permit. This permit provides that the city may acquire the property at a fair price during the life of the permit.

1933-1939, Two-Man Car Ordinance

In 1933 the company sought repeal of a San Francisco ordinance prohibiting one-man street car operation. The request was denied but the company succeeded, in 1934, in obtaining a temporary injunction against enforcement.

of the ordinance. The city appealed the case to the United States Circuit Court of Appeals, which later rendered decision upholding the ordinance. The company appealed the decision to the United States Supreme Court but the court declined to review the case.

Meanwhile, the Market Street Railway Company in March, 1935, began one-man operation on a number of car lines and continued such operation in greater or lesser degree until February, 1939.

In October, 1935, the No. 35 Harrison Street car line was converted to electric trolley coach operation. In 1938 street car service was discontinued and bus operation substituted on the Visitacion Valley line. In 1939 the Howard Street car line ceased operation, its franchise having expired. The Municipal Railway has since inaugurated trolley coach service on Howard Street (September, 1941).

1939-1942, Rise of Motor Coach Operation

A rapid transition from electric and cable car operation to motor coach operation began in 1939. The number of motor coaches has increased from 11 at the end of 1938 to 125 as of December 31, 1942. The Sacramento-Clay cable line was converted to bus operation early in 1942 leaving only two cable lines operated by Market Street Railway at the present time.

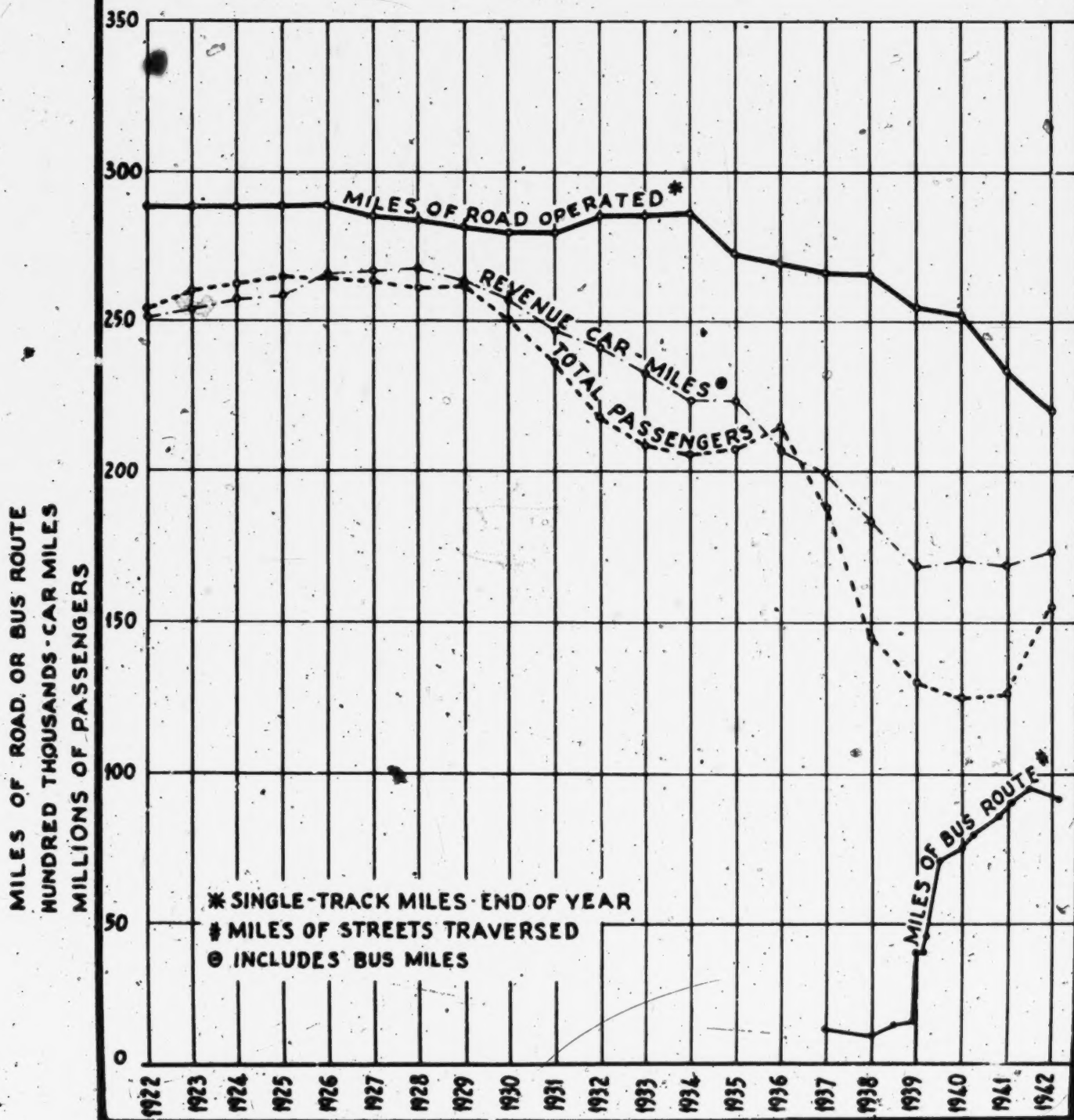
Chart 2-1 shows the trends of passengers, revenue, car miles, and miles of road operated, from 1922 to 1942. The recent rapid expansion of bus operations is also indicated on the chart.

Municipal Ownership

Ever since the Municipal Railway began operation in 1912 there has been more or less continuous agitation for the purchase of the Market Street Railway properties by the city for municipal operation. The question has been submitted to the voters of San Francisco on a number of occasions but has been rejected every time. The most recent of such elections were held in November, 1942, and in April, 1943.

(Here follows 1 photolithograph side folio 356)

MARKET STREET RAILWAY COMPANY OPERATING STATISTICS YEARS 1922 TO 1942



[fol. 357]

B—Rate History

For many years prior to 1937 the fare on both the Market Street and Municipal lines was 5 cents, with free transfers. In 1937 the Market Street Railway Company, in Application No. 21115, applied to the Railroad Commission for an increase in rates. The Commission, in Decision No. 29889, dated June 21, 1937 (40 CRC 525), denied the company's request for a 7-cent cash fare, but granted a 2-cent transfer charge and an increase from 20 to 25 cents for a Sunday and holiday pass. The new rates became effective July 6, 1937.

In March, 1938, under the same application, the company petitioned the Commission to authorize a 7-cent fare with free transfers and a rate of 20 rides for 70 cents for school children. By Decision No. 30849, dated May 9, 1938 (41 CRC 349), the Commission authorized a 7-cent fare with four tokens for 25 cents on other than interurban cars, 16 rides for 50 cents for school children, and a 7-cent or token unit fare in place of the 5-cent unit fare on the interurban lines. The 2-cent charge for transfers was discontinued. These fares became effective May 29, 1938.

In a second supplemental application the company sought authority to establish a straight 7-cent fare and to discontinue selling four tokens for 25 cents. In Decision No. 31472, dated November 23, 1938 (41 CRC 651), the Commission directed the company to petition the city for authority to abandon operation of certain lines and for relief from the "jitney" competition. The decision authorized the rate increases sought, provided such authority and relief were not received by January 1, 1939. The new fares became effective January 1, 1939, and are the fares in effect at the present time. They are as follows:

7-cent cash fare in San Francisco, other than on interurban cars, with free transfer;

School children 16 rides for 50 cents, with free transfers;

Sunday and holiday pass, for use in San Francisco, 25 cents;

South San Francisco line, 7 cents;

San Mateo line, 7 cents, fare to be in accordance with the tariff filed with the Railroad Commission on May 23, 1938.

C—Present Operations

The Market Street Railway Company furnishes passenger transportation service in San Francisco by means of electric and cable cars, trolley coaches and motor buses, [fol. 358] and operates one car line south into San Mateo County (Line No. 40). A transportation map of San Francisco, showing the routes of street car and bus lines as of June, 1942, is included as the frontispiece of this report.

The company owns 219.63 miles of street car tracks over which were operating on May 31, 1943, 269 electric cars and 18 cable cars. Added to these there were 9 trolley coaches and 115 motor coaches in operation on that date. This equipment is distributed over 21 different electric lines, 1 trolley coach line, 2 cable lines, and 18 motor coach lines.

Table 2-1 shows interesting detailed data concerning the operations of these separate lines for the month of May, 1943. It will be observed that the electric car lines represented 63.5 per cent of the total route mileage; accounted for 68 per cent of the total car and coach miles traveled during the month; carried 73 per cent of the total passengers; and earned 77 per cent of the revenue. Similar percentage data for all types of service is tabulated below:

Percentage Distribution of Operations by Types of Service

Type of Operation	Month of May, 1943*			
	Round Trip Miles of Route	Vehicle Miles Traveled	Total Passengers Carried	Revenue
Electric Cars	63.5%	68.1%	73.2%	77.0%
Motor Coaches	32.3	26.4	19.3	16.5
Cable Cars	1.8	2.9	5.6	6.0
Trolley Coaches	2.4	2.6	1.9	0.5
Total	100.0%	100.0%	100.0%	100.0%

* See Table 2-1 for detail.

Practically all of the passenger equipment owned by the company is housed at 8 car barns and yards. The following table lists these storage places and shows the location and the capacity of each; also the usual type of equipment stored at each location.

Market Street Railway Company

Operating Statistics by Lines—Month of May 1943

Line No.	Name	Round Trip Miles	No. of Units Operated*	Passenger Car Miles	Revenue, Passengers	Transfer Passengers	Total Passengers Carried	Revenue
Electric Car lines								
1	Sutter-California	13.70	9	37,404	326,616	106,097	432,713	\$22,663.80
2	Sutter-Clement	14.78	10	45,304	359,551	116,774	476,325	24,942.26
3	Sutter-Jackson	7.05	10	21,790	253,969	73,668	327,637	17,664.36
4	Sutter-Sacramento	10.00	6	18,915	177,135	73,668	227,987	12,395.74
5	McAllister	13.65	21	82,290	704,613	171,764	876,377	48,807.34
6	Haight and Masonic	11.62	10	32,370	262,593	66,201	328,794	18,230.21
7	Haight and Ocean	15.42	13	51,378	409,911	107,603	517,514	28,381.64
8	Market	7.53	3	17,427	49,633	16,511	66,144	3,438.02
9	Valencia	10.56	19	68,828	563,327	170,934	734,261	39,133.79
11	Mission and 24th	9.59	9	29,867	235,712	81,725	317,437	16,435.36
14	Mission	15.66	40	147,467	1,103,173	324,191	1,427,364	76,628.52
17	Haight and Ingleside	14.50	12	44,813	323,113	72,611	395,724	22,351.36
19	9th and Polk	4.20	1	114	331	22	353	23.18
20	Ellis, O'Farrell and Kearny	16.04	19	50,337	566,137	185,790	751,927	39,408.30
21	Hayes	10.49	17	51,141	480,385	126,379	606,764	33,349.83
22	Fillmore	9.40	25	75,704	725,192	472,689	1,197,881	50,079.34
25	San Bruno	10.70	8	26,598	167,979	72,548	240,527	11,750.45
26	Guerrero and Daly City	16.10	2	2,400	5,709	3,500	9,209	399.63
31	Balboa	11.38	18	72,427	524,615	122,503	647,118	36,406.69
36	Folsom	8.90	6	15,255	60,080	26,014	86,094	4,205.63
40	San Mateo	39.96	11	60,028	402,969	71,075	474,044	27,766.35
	Ground Collections				33,254	15,102	48,356	2,327.79
<hr/>								
	Subtotal, Electric Cars	270.93	269	944,858	7,735,997	2,454,553	10,190,550	\$536,849.59
<hr/>								
33	Trolley Coach Line							
	18th Street Trolley	10.17	9	35,525	181,567	89,748	271,315	12,514.71
	School Passes		6		367,992*		367,992*	11,499.75
<hr/>								
	Total Electric	281.10	278	980,383	8,285,556	2,544,301	10,829,857	560,864.05

* Estimated. † Started operating May 17, 1943.

* End of month.

[fol. 360]

Table 2-1
Market Street Railway Company
Operating Statistics by Lines—Month of May 1943

Line No.	Name	Round Trip Miles	No. of Units Operated	Passenger Car Miles	Revenue Passengers	Transfer Passengers	Total Passengers Carried	Revenue
Electric Car lines								
Cable Carlines								
59	Powell	3 22	7	16,511	210,021	100,531	310,552	14,610.64
60	Jackson	4 46	11	23,993	301,683	141,361	443,044	20,979.55
	School Passes				24,533*		24,533*	766.65
	Subtotal, Cable Cars	7 68	18	40,504	536,237	241,892	778,129	36,356.84
Motor Coach Lines								
4	Sutter-Sacramento	6 00	2	4,191	10,066	8,095	18,161	652.27
10	Glen Park	4 70	3	14,778	43,741	41,059	84,800	3,034.93
12	Ingleside	8 50	2	6,626	5,870	12,339	18,209	410.88
15	Kearny-Beach	22 00	38	123,780	665,580	449,260	1,114,840	46,152.89
19	9th and Polk	6 00	11	31,733	206,044	122,809	328,853	14,274.28
23	Rich	2 40	1	1,479	1,924	1,247	3,171	128.46
24	Divisadero and Castro	9 00	8	35,186	192,368	132,476	324,844	13,265.85
25	San Bruno Avenue	10 80	5	13,805	50,736	30,670	81,406	3,463.20
26	Guerrero and Daly City†	16 10	11	38,457	97,828	39,540	137,368	6,758.69
27	Bryant	9 00	5	13,131	41,842	29,742	71,584	2,896.39
28	Ferry and Depot	3 00	1	420	1,454	462	1,916	101.81
35	24th Street	4 60	3	10,656	46,277	24,984	71,261	3,192.56
36	Folsom	8 90	4	9,602	30,205	17,435	47,640	2,068.77
50	Geneva Avenue	6 00	2	7,688	6,060	7,076	13,136	418.29
51	Silver Avenue	10 20	4	21,697	61,857	54,307	116,164	4,300.87
52	Excelsior	2 50	2	6,477	13,480	16,597	30,077	933.08
53	Southern Heights	3 50	2	8,684	22,012	34,265	56,277	1,495.56
55	Sacramento Street School Passes	4 7	3	8,131	34,557	17,297	51,854	2,384.60
	Charted Service		8	10,305	98,131*		98,131*	3,066.61
	Subtotal, Motor Coaches	117 40	115	27,966.826	1,658,278	1,039,640	2,697,938	113,992.79

[fol. 361]

Location	Storage Capacity		
	Inside	Outside	Total
Electric Cars			
Turk and Fillmore	65	—	65
McAllister & Central Ave.	31	42	73
Haight & Stanyan	30	—	30
32nd Ave. & Clement	20	55	75
Geneva & San Jose Avenue	93	6	99
Lincoln Way & Funston Ave.	—	80	80
<hr/>			
Subtotal—Electric Cars	239	183	422
Cable Cars			
Mason and Washington	39	4	43
Coaches			
24th St. & Utah	130	—	130
<hr/>			
Total	408	187	595

The list of equipment which was operating on May 31st does not represent all of the rolling stock owned by the company. The table following shows the inventory of all passenger carrying equipment as of April 30, 1943.

Inventory of Rolling Stock as of April 30, 1943

Electric cars	441
Cable cars	39
Trolley coaches	9
Motor coaches	124
<hr/>	
Total Passenger Units	613
Work cars	29
<hr/>	
Total	642

The company does not produce any of the electrical energy which it consumes, but purchases it from Pacific Gas and Electric Company. The power plant which furnishes motive power for the two remaining cable lines is located at Mason and Washington Streets.

CHAPTER III

Operating Revenue

Until the beginning of the present war boom, Market Street Railway Company had been faced with steadily diminishing revenues for a period of about fifteen years. Total operating revenue decreased from a maximum of \$9,903,000 in 1925 to a minimum of approximately \$6,060,000 in the years 1940 and 1941, then increased to \$7,575,000 in the year 1942 and further to \$8,321,000 for the 12 months ended May 31, 1943.

While many of the mass transportation companies throughout the country have faced this same condition, due to the increasing use of the private automobile, the Market Street Railway has faced the added handicap of having to compete with a municipally owned street car system.

Table 3—F shows the operating revenue by accounts for the years from 1922 to 1942. It is to be noted that in all these years passenger revenue made up 99 per cent or more of total operating revenue. The index of total operating revenue on Table 3—1 shows definite grouping of annual trends: 1923-1928 is a period of little variation; 1928-1933 is a period of definite decline; 1933-1936 is a period of little variation; 1936-1938 is a period of definite decline; 1938-1941 is a period of little variation; and 1942 marks the first year of the present upward trend due to the war.

The total railway operating revenue of the Market Street Railway for the year 1942 was \$7,574,541.41. This revenue was derived from the following sources:

Item

I—Revenue from Transportation

Ac. 101—Passenger Revenue

Item	Revenues	Per Cent of Total Operating Revenue	Passengers	Per Cent of Total Passengers
(a) Cash Fares	\$6,187,410.54	81.68	88,391,493	79.34
(b) Tokens	1,100,995.00	14.53	15,728,500	14.12
(c) School Passes	169,537.56	2.24	5,425,202	4.87
(d) Sunday Passes	48,933.50	0.65	1,565,872	1.41
(e) Excursion Tickets	8,751.25	0.12	175,025	.16
(f) Full-Fare Tickets	9.54		186	

Total Account 101

Ac. 103—Special Car Revenue

(a) Special Car & Coach Rev.	19,955.49	0.27	115,782	0.10
(b) Miscellaneous	140.00		381	

Total Account 103

Total Revenue from Trans.

II—Revenue from Other Railway Operations

Ac. 110—Station & Car Priv.	\$23,219.13	0.31		
Ac. 115—Rent of Tracks & Fac.	4,057.09	0.05		
Ac. 116—Rent of Equipment	1,367.01	0.02		
Ac. 117—Rent of Bldgs., Other Prop.	10,165.30	0.13		

Total—Rev. from Other Ry. Oper.

Total Operating Revenues

\$7,574,541.41

100.00

0.51

38,808.53

0.13

10,165.30

0.02

1,367.01

0.05

4,057.09

0.31

\$23,219.13

99.49

\$7,535,732.88

0.27

20,095.49

0.27

19,955.49

99.22

7,515,637.39

9.54

8,751.25

0.12

48,933.50

2.24

169,537.56

14.53

1,100,995.00

81.68

\$6,187,410.54

Table 3-1
Market Street Railway Company
Operating Revenue by Accounts—1922-1942

Year	Account 101 Passenger Revenue	Account 103 Special Car Revenue	Total Revenue from Trans- portation	Account 110 Sta. & Car Privileges	Account 115 Rent of Tracks and Facilities	Account 116 Rent of Equipment	Account 117 Rent of Bldgs. and Other Prop.	Total Other Operating Revenue	Total Operating Rev. Amount	Index (1928= 100)
1922	\$9,517,315.61	\$2,878.45	\$9,520,194.06	\$56,845.54	\$	\$3,177.07	\$3,220.19	\$63,242.80	\$9,583,436.86	98
1923	9,745,825.47	1,551.25	9,747,376.72	56,860.43		2,149.77	3,006.06	62,016.26	9,809,392.98	101
1924	9,788,392.77	760.00	9,789,152.77	56,962.20		2,573.57	3,671.89	63,207.66	9,852,360.43	101
1925	9,829,218.70	977.50	9,830,196.20	66,107.36		2,834.97	3,629.75	72,572.08	9,902,768.28	102
1926	9,815,087.04	570.00	9,815,657.04	67,477.73		1,290.21	7,242.65	76,010.59	9,891,667.63	101
1927	9,739,558.00	737.50	9,740,295.50	69,259.96		1,583.98	8,430.94	79,274.88	9,819,570.38	101
1928	9,668,384.07	602.60	9,668,986.67	70,628.87		3,532.50	11,312.70	85,474.07	9,754,460.74	100
1929	9,504,931.23	633.75	9,505,564.98	70,360.82		4,569.61	9,698.37	84,628.80	9,590,193.78	98
1930	9,112,106.36	467.50	9,112,573.86	68,985.38		4,508.67	10,272.49	83,766.54	9,196,340.40	94
1931	8,488,343.47	520.00	8,488,863.47	67,794.45		2,231.78	10,432.92	80,459.15	8,569,322.62	88
1932	7,739,168.41	382.50	7,739,550.91	51,793.53		3,657.19	10,505.81	65,956.53	7,805,507.44	80
1933	7,347,445.01	145.00	7,347,590.01	48,609.54		1,086.89	10,130.00	59,826.43	7,407,416.44	76
1934	7,225,950.90	252.50	7,226,203.40	33,398.91		3,326.64	9,931.81	46,657.36	7,272,860.76	75
1935	7,260,559.65	245.00	7,260,804.65	49,154.72		4,037.91	9,957.71	63,150.34	7,323,954.99	75
1936	7,437,039.25	250.00	7,437,289.25	56,856.88		4,456.22	9,751.39	71,064.49	7,508,353.74	77
1937	7,115,448.28	460.00	7,115,908.28	52,494.45		1,943.43	9,407.40	63,845.28	7,179,753.56	74
1938	6,415,758.26	295.00	6,416,053.26	45,995.60		2,949.46	9,543.97	58,449.03	6,474,502.29	66
1939	6,366,995.72	320.00	6,367,315.72	56,539.35		1,743.91	10,717.17	69,000.41	6,436,316.13	66
1940	6,011,854.81	3,753.50	6,015,608.31	38,409.14	2,784.08	1,853.09	10,439.05	53,015.36	6,068,623.67	62
1941	6,010,757.43	13,377.05	6,024,334.48	22,462.93	4,128.52	1,176.13	10,571.93	38,339.51	6,062,673.99	62
1942	7,515,637.39	20,095.49	7,535,732.88	23,219.13	4,057.09	1,367.01	10,165.30	38,808.53	7,574,541.41	78

[fol. 364] As is the case with the operations of all mass transportation companies, the above table shows that nearly all the operating revenue is derived from Account 101, Passenger Revenue; for 1942 it was 99.22 per cent of all operating revenue. Account 103, Special Car Revenue produced only 0.27 per cent and the combined Group II, Revenue from Other Railway Operations, produced 0.51 per cent.

A—Explanation Revenue Items

The composition of the several revenue accounts is outlined in this section..

I. REVENUE FROM TRANSPORTATION

Account 101—Passenger Revenue

a. *Cash Fares.* In this item is included all 7-cent cash fares.

b. *Tokens.* In this item is included revenue at the rate of 7 cents each for all tokens collected. These full-fare tokens may be sold singly or in multiple lots, usually 7 tokens for 35 cents.

c. *School Passes.* School passes are in the form of a card which is good for 16 rides with transfer privileges and is sold for 50 cents. When presented for transportation, the conductor punches it, showing one ride has been used. For statistical purposes, each pass when sold is immediately tabulated as 16 passengers carried.

d. *Sunday and Holiday Passes.* Sunday and holiday passes are sold for 25 cents and are good for unlimited use in San Francisco on the Sunday or holiday on which they are sold. As a result of a study made by the company, it was determined that each pass is used about 8 times. For statistical purposes, therefore, each pass sold is tabulated as 8 passengers carried.

e. *Excursion Tickets.* These are round-trip tickets sold for use either to or from San Mateo. They are sold daily for 40 cents for the round trip. The regular one-way fare is 25 cents. For statistical purposes, each round-trip ticket is tabulated as 8 passengers carried.

f. *Full-Fare Tickets*. This very minor item represents tickets which were sold prior to the use of metal tokens and which are now being used by the holders in payment of their fare.

Account 103—Special Car Revenue

a. *Special Car and Coach Revenue*. This revenue is derived from charter and contract use of motor coaches and, in a minor degree, of street cars. At the present time the major portion represents charter and contract motor coach service for industries and organizations directly engaged in war activity. For statistical purposes, the number of [fol. 365] passengers actually carried is tabulated.

b. *Miscellaneous*. This represents minor revenue, not otherwise assignable.

II. REVENUE FROM OTHER RAILWAY OPERATIONS

Account 110—Station and Car Privileges

The major portion of the revenue in this account is derived from advertising in street cars and buses.

Account 115—Rent of Tracks and Facilities

The major portion of the revenue in this account is the rent from the Municipal Railway in respect of the jointly-used tracks on Ocean Avenue.

Account 116—Rent of Equipment

The major portion of the revenue in this account represents rent from the Municipal Railway and California Street Cable Railroad for the use of work equipment used in the construction or repair of joint facilities.

Account 117—Rent of Buildings and Other Property

The revenue in this account is derived from the rent of Market Street Railway poles used jointly with other utilities, such as the Pacific Gas and Electric Company. The

Pacific Telephone and Telegraph Company, and Western Union Telegraph Company. Other revenue includes in this account is from the rent of buildings and lots owned by the company for such varied use as auto sales lot, storage building, junk yard, dwellings, etc.

B—Cash Fares vs. Token Fares

The effect on the fare structure of selling tokens in lots at a rate lower than the single cash fare is shown by the following table, which portrays the results for the 7-month period in 1938 during which reduced-date tokens were sold.

Relative Use of Tokens (4 for 25¢) and 7-Cent Cash Fare by Months
June to December, 1938

	7-Cent Cash Fares (Thousands)	Token Fares (4 for 25¢) (Thousands)	Total (Thousands)	Relative Number		Weighted Average Fare
				7-Cent Cash Fare	Token Fares	
June 1938	2,361	5,126	7,487	31.53%	68.47%	6.49¢
July	2,688	4,965	7,653	35.12	64.88	6.51
August	2,320	5,448	7,768	29.87	70.13	6.47
Sept.	2,160	5,412	7,572	28.53	71.47	6.46
Oct.	2,239	5,624	7,863	28.48	71.52	6.46
Nov.	2,242	5,426	7,668	29.24	70.76	6.47
Dec.	2,442	5,636	8,078	30.23	69.77	6.48
7 Mos. Total	16,452	37,637	54,089	30.42%	69.58%	6.48¢

[Vol. 366]

III—Operating Revenue

The table shows that approximately 70 per cent of the passengers took advantage of the reduced cost of the tokens, while 30 per cent of the passengers paid the single-ride fare of 7 cents. As a result of this use of reduced-fare tokens, the weighted average fare was 6.48 cents per passenger for the 7-month period.

At the present time, the single cash fare is 7 cents and the token fare is 7 cents. The relative use of each by

months since January, 1942, is shown in the following table:

Ratio of Use of 7¢ Tokens and 7¢ Cash Fares by Months—

January, 1942 to May, 1943

Month	Cash Fare Passengers (Thousands)	Token Fare Passengers (Thousands)	Total (Thousands)	Relative Number	
				Cash Fare Passengers	Token Fare Passengers
1942					
January	6,249	1,000	7,339	85.1%	14.9%
February	5,928	1,055	6,983	84.9	15.1
March	6,826	1,235	8,061	84.7	15.3
April	6,766	1,222	7,988	84.7	15.3
May	7,056	1,255	8,311	84.9	15.1
June	7,131	1,260	8,431	85.1	14.9
July	7,614	1,332	8,946	85.1	14.9
August	7,767	1,359	9,126	85.1	14.9
September	7,794	1,373	9,167	85.0	15.0
October	8,458	1,493	9,951	85.0	15.0
November	7,868	1,397	9,265	84.9	15.1
December	8,895	1,657	10,552	84.3	15.7
Total	88,392	15,728	104,120	84.9	15.1
1943					
January	7,840	1,842	9,682	81.0	19.0
February	7,414	1,764	9,178	80.8	19.2
March	8,132	2,143	10,325	79.2	20.8
April	7,878	2,067	9,945	79.2	20.8
May	7,798	1,990	9,788	79.7	20.3
Total 5 Mos.	39,112	9,806	48,918	80.0	20.0

During recent months the company has carried on a campaign to encourage the use of tokens, and with some apparent success. The table shows that there has been an increase in the use of tokens between January, 1942, and May, 1943. January, 1942, shows 85.1 per cent cash-fare passengers, and 14.9 per cent token-fare passengers while in May, 1943, there were 79.7 per cent cash-fare passengers and 20.3 per cent token-fare passengers. Since there is no inducement by way of a lower fare for the purchase of tokens in groups, the use of tokens today is merely for convenience and for speed in handling passengers.

[Vol. 367] The causes of this increased use of tokens may be divided into two parts:

1. Multiple purchase on the part of patrons.

a. Increased use of tokens by the conductors in making change for single-ride passengers. For instance, a passenger boarding a street car will present 10 cents to the conductor. Instead of giving change to the patron in the form

of a nickel and 5 pennies, the conductor will give the patron a token and 3 pennies. Thus, instead of handling 6 coins, he only handles 1 token and 3 coins. Furthermore, it is easier for the conductor to check the fare box to make certain the customer has deposited one token, rather than 3 coins.

C. Revenue and Passenger Trends, 1922-1942

Table 3-2 shows the trend of passenger revenue, revenue passengers, average revenue per revenue passenger, and the ratio of transfer passengers to revenue passengers. The most pertinent comparison of revenue and passengers is in the years 1938 and 1939. In each of these two years the index for passenger revenue is 66 while the index for revenue passengers was 58 for 1938 and 49 for 1939. In other words, the same amount of revenue was derived from 14 per cent fewer revenue passengers. The increase in fares, of course, contributed to the loss of passengers since the Municipal Railway fare remained 5 cents. The fare increase thus did not result in increases in 1939, but fewer passengers produced approximately the same revenue as in 1938.

Table 3-2 also shows the average revenue per revenue passenger. For 1942 this figure was about $6\frac{3}{4}$ cents per revenue passenger. Although the regular fare is 7 cents, the average is below this because of the reduced cost of school fares, Sunday pass fares, etc.

Another important fact revealed by Table 3-2 is that the transfer ratio for the years 1940, 1941, and 1942 is the highest transfer ratio in the last twenty years, a factor which tends to produce higher operating costs, for, with a transfer ratio of 40 per cent (1942 was 39.8 per cent) it means that for every 10 fare passengers who board a car, there are on the average, four others who board the car as free transfer passengers.

D. Increased Used of Motor Coaches

Perhaps the outstanding development in the operating results of the Market Street Railway in recent years has been the increase in the number of revenue passengers carried by the motor coach lines.

The table following shows that as recently as 1938, less than one out of every 100 revenue passengers was carried

Table 3-2

Market Street Railway Company

Passenger Revenue, Revenue Passengers, Revenue per Passenger,
and Transfer Ratio

1922-1942

Year	Passenger Revenue		Revenue Passengers*		Average Revenue per Revenue Passenger	Ratio of Trans- fer Passengers to Revenue Passengers
	Amount	Index#		Index#		
1922	\$9,517,316	98	191,925	99	4,959†	32.4%
1923	9,745,825	101	196,515	101	4,959	32.4
1924	9,788,393	101	197,376	102	4,959	32.9
1925	9,829,219	102	198,278	102	4,957	33.4
1926	9,815,087	102	198,031	102	4,956	34.3
1927	9,739,558	101	196,556	101	4,955	34.1
1928	9,668,384	100	193,767	100	4,990	35.0
1929	9,504,931	98	194,429	100	4,889	34.7
1930	9,142,106	94	186,460	96	4,887	34.4
1931	8,488,343	88	174,390	90	4,867	35.4
1932	7,739,168	80	158,781	82	4,874	37.0
1933	7,347,445	76	150,943	78	4,868	37.9
1934	7,225,951	75	148,614	77	4,862	38.0
1935	7,260,560	75	149,775	77	4,848	38.2
1936	7,437,039	77	153,911	79	4,832	38.7
1937	7,115,448	74	141,972	73	5,012	32.4
1938	6,415,758	66	111,787	58	5,739	29.5
1939	6,366,966	66	95,563	49	6,663	35.6
1940	6,011,855	62	89,924	46	6,685	38.8
1941	6,010,757	62	89,855	46	6,689	40.5
1942	7,515,637	78	111,403	57	6,746	39.8

* Excludes Revenue Transfer Passengers.

* Index 1928 = 100.

[fol. 369] by motor coaches, while in 1942, almost one out of every four revenue passengers was carried by motor coaches.

Comparison of Rail and Motor Coach Revenue Passengers
1929-1942

Year	Rail*		Motor Coach		Total		Motor Coach as Per Cent of Total
	Revenue Passengers (Thousands)	Index#	Revenue Passengers (Thousands)	Index#	Revenue Passengers (Thousands)	Index#	
1929	193,523	127	906	92	194,429	126	0.47%
1930	185,554	121	906	92	186,460	121	0.49
1931	173,511	113	879	89	174,390	113	0.50
1932	157,656	103	1,125	114	158,781	103	0.71
1933	149,825	98	1,118	113	150,943	98	0.74
1934	147,514	96	1,100	112	148,614	97	0.74
1935	148,733	97	1,042	106	149,775	97	0.70
1936	152,925	100	986	100	153,911	100	0.64
1937	141,073†	92	899†	91	141,972†	92	0.63
1938	110,874†	73	913†	93	111,787†	73	0.82
1939	93,288	61	2,275	231	95,563	62	2.38
1940	79,629	52	10,295	1,044	89,924	58	11.45
1941	71,477	47	18,378	1,864	89,855	58	20.45
1942	84,849	55	26,554	2,694	111,403	72	23.84

* Includes trolley coach operation which began in 1935.

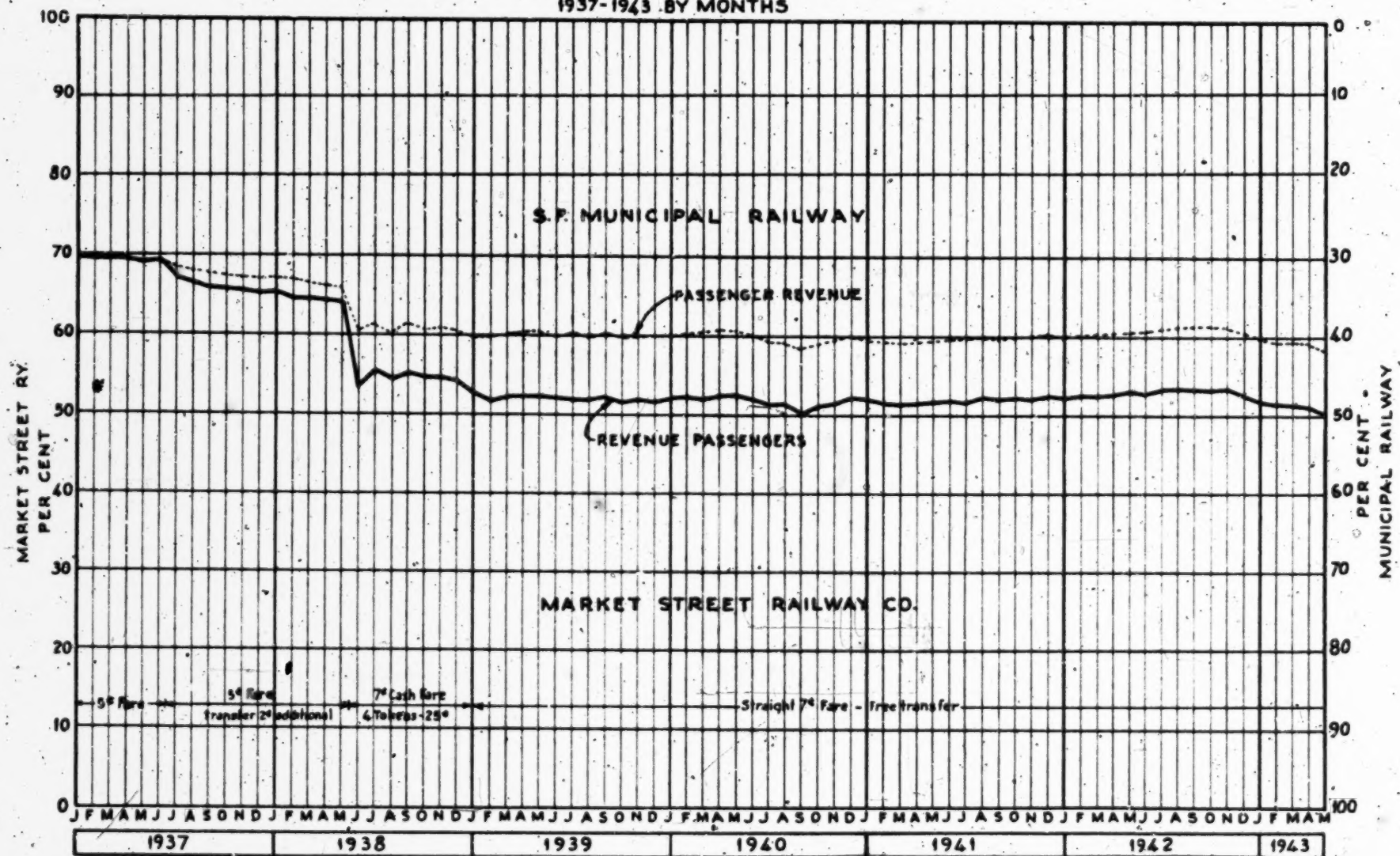
* 1936 = 100.

† Excludes revenue transfer passengers.

E. Effect of Fare Changes

Chart 3-1 shows the trend of distribution of regular fare passengers between the Market Street Railway and the Municipal Railway. On it the effect of Market Street's fare increases is apparent. There was only a minor diversion of revenue passengers to the Municipal Railway when the Market Street Railway increased its fare structure on July 6, 1937, from 5 cents with free transfer to 5 cents with a transfer 2 cents additional. However, when the Market Street Railway on May 29, 1938, further increased its fare structure to 7 cents cash or 4 tokens for 25 cents, with free transfer, the Market Street Railway lost 10 out of every 100 passengers carried by both companies to the Municipal Railway; the Market Street Railway's portion dropping from 64 to 54 out of every 100 passengers carried by both companies and the Municipal Railway's portion increasing from 36 to 46 passengers. When the straight 7-cent fare was introduced January 1, 1939, Market Street's portion dropped another two points to about 52 per cent of the total.

MARKET STREET RY. AND S.F. MUNICIPAL RAILWAY
PERCENTAGE DISTRIBUTION OF REVENUE PASSENGERS AND PASSENGER REVENUE
 (REVENUE TRANSFERS EXCLUDED)
 1937-1943 BY MONTHS



[fol. 371] The percentage division of revenue passengers between the companies by years from 1937 to 1942 and monthly for 1943 is as follows:

Year	Market Street Railway	Municipal Railway
1937	67.85%	32.15%
1938	59.11	40.89
1939	52.03	47.97
1940	51.78	48.22
1941	52.00	48.00
1942	53.08	46.92
1943		
January	51.97	48.03
February	51.69	48.31
March	51.58	48.42
April	51.28	48.72
May	50.30	49.70

By May, 1943, the Municipal Railway's patronage had increased to the extent that it now hauls almost as many revenue passenger- as does the Market Street Railway.

Chart 3-2 shows a comparison of the ratio of transfer passengers to regular-fare passengers, by months, for the years 1937 and 1938, for the Market Street Railway and the Municipal Railway. While the transfer ratio of the Municipal Railway remained fairly constant over this period, the transfer ratio for the Market Street Railway dropped precipitously as a result of the inauguration of the 2-cent transfer charge on July 6, 1937, and the ratio went up decidedly when the transfer charge was discontinued on May 29, 1938.

Chart 3-2 also shows the trend of the regular-fare passengers for both the Market Street Railway and the Municipal by months from January, 1937 to June, 1939. While there was some decrease in the number of regular-fare passengers of the Market Street Railway when the 2-cent additional charge for a transfer became effective on July 6, 1937, the effect was very pronounced when the fare was raised on May 29, 1938, to 7 cents with free transfer or 4 tokens for 25 cents. Some of this drop, however, was the normal vacation period drop. When the fare was raised on January 1, 1939, to a straight 7 cents with free transfer

the drop in the number of revenue passengers was not readily apparent.

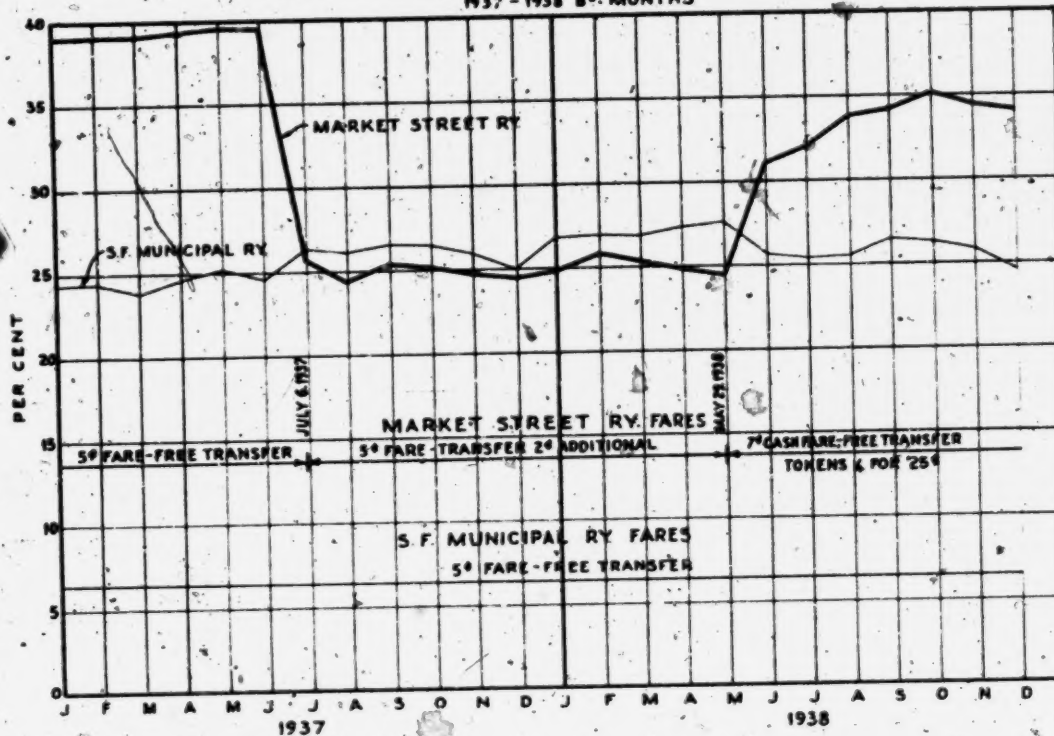
F. Comparison of Passenger Revenue Trends

Table 3-3 shows a comparison of the passenger revenue of the Market Street Railway, the Municipal Railway, and the Los Angeles Railway for the period 1922-1942; also an

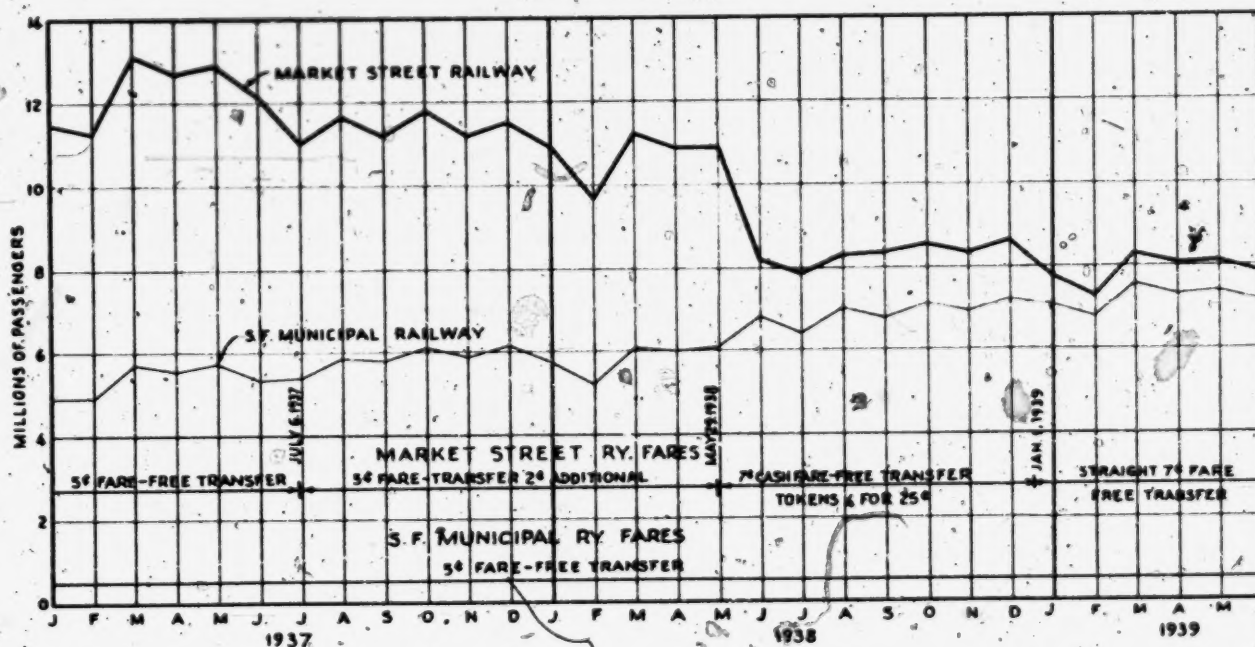
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PASSENGER TRENDS MARKET STREET RY AND S.F. MUNICIPAL RAILWAY

RATIO OF TRANSFER PASSENGERS TO REGULAR FARE PASSENGERS
1937 - 1938 BY MONTHS



TREND OF REGULAR FARE PASSENGERS
1937 - 1939 BY MONTHS



[fol. 373]

Table 3-3

Comparison of Passenger Revenue Trends

Market Street Railway, San Francisco Municipal Railway and
Los Angeles Railway

1922-1942

Passenger Revenue

Year	Market Street Railway		Municipal Railway		Los Angeles Railway*	
	Amount	Index#	Amount	Index#	Amount	Index#
1922	\$9,517,316	98	\$2,933,185	85	\$10,989,501	81
1923	9,745,825	101	3,084,214	89	12,511,260	93
1924	9,788,393	101	3,217,788	93	12,951,846	96
1925	9,829,219	102	3,357,444	97	12,708,733	94
1926	9,815,087	102	3,382,173	98	12,879,917	95
1927	9,739,558	101	3,427,155	99	13,157,278	97
1928	9,668,384	100	3,447,186	100	13,499,454	100
1929	9,604,931	98	3,569,636	104	14,746,891	109
1930	9,112,106	94	3,481,808	101	13,613,947	101
1931	8,488,343	88	3,307,060	96	12,111,835	90
1932	7,739,168	80	2,971,542	86	10,266,247	76
1933	7,347,445	76	2,758,308	80	9,336,144	69
1934	7,225,951	75	2,928,008	85	9,707,139	72
1935	7,200,560	75	3,011,229	87	10,486,180	78
1936	7,437,039	77	3,114,593	90	11,709,503	87
1937	7,115,448	74	3,266,642	95	12,285,194	91
1938	6,415,758	66	3,746,068	109	12,070,752	89
1939	6,366,996	66	4,250,461	123	12,221,218	91
1940	6,011,855	62	4,039,341	117	12,469,248	92
1941	6,010,757	62	4,057,995	118	13,144,881	97
1942	7,515,637	78	4,849,788	141	15,818,640	117

Index 1928 = 100.

* Includes share of Los Angeles Motor Coach Company.

[fol. 374] index of revenue for each company. On Chart 3-3 is plotted the index for each company as found in Table 3-3.

An analysis of the figures in Table 3-3 and a study of Chart 3-3 shows the trends in the periods of years as follows:

1922-1929

During this period, the Market Street Railway was just about holding its own. On the other hand, both the Municipal Railway and the Los Angeles Railway gained revenue.

1929-1933

During these "depression" years, the revenues of Market Street Railway and the Municipal Railway both decreased at about the same rate, while the Los Angeles Railway revenues dropped more rapidly.

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1933-1936

The Market Street Railway index of passenger revenue was about constant during these years, both the Municipal Railway and the Los Angeles Railway having decided uptrends, with that of the Los Angeles Railway being the greater.

1936-1938

The Market Street Railway index dropped because of the fare increase, the Los Angeles Railway index increased slightly, while the Municipal Railway had a decided increase.

1938-1939

The Market Street Railway index was the same in spite of the fare increase on January 1, 1939. However, the loss of revenue passengers because of the fare increase was, no doubt, offset by the added passengers resulting from the Golden Gate Exposition on Treasure Island. Again, the Municipal Railway showed a decided gain, while the Los Angeles Railway showed a slight gain.

1939-1941

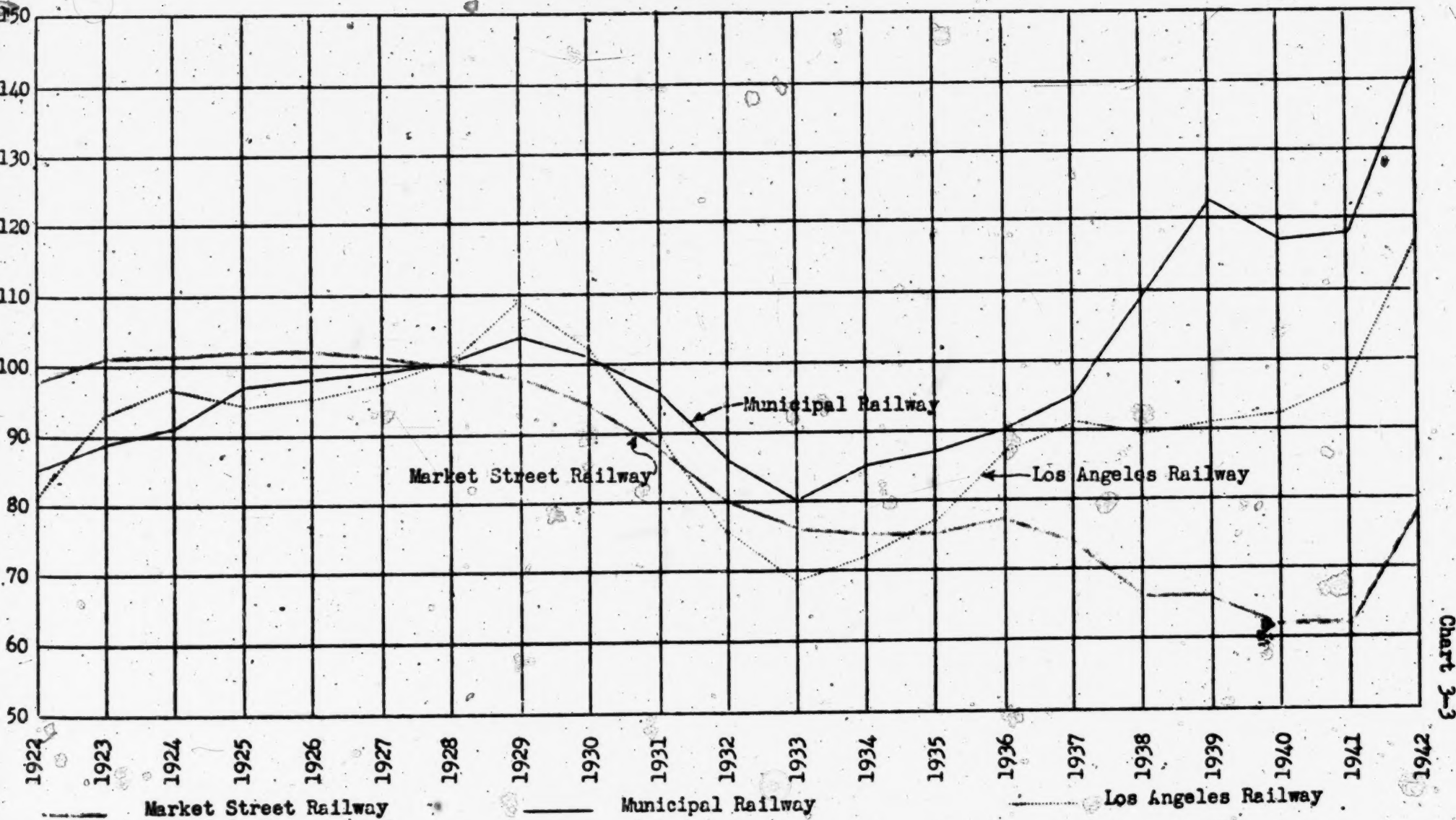
During this period, the Market Street Railway and the Municipal Railway followed the same pattern, resulting in a slight loss of revenue. The Los Angeles Railway, on the other hand, had some gain.

1941-1942

During the year 1942, as a result of the war emergency there has been a decided increase in the revenues of all three companies and the approximate same rate of increase has applied to all three.

(Here follows 1 photolithograph, side folio 375)

COMPARATIVE TRENDS OF PASSENGER REVENUE
MARKET STREET RAILWAY, SAN FRANCISCO
MUNICIPAL RAILWAY, AND LOS ANGELES RAILWAY
1922-1942



[fol. 376]

G—Summary

1. Decreasing Revenue

As is shown in Chart 3—3 and Table 3—3, the Market Street Railway for the last 15 years, prior to 1942, has faced the problem of an almost constantly decreasing revenue, while the revenue of the Municipal Railway, with the exception of the "depression" years, has increased almost continuously.

2. Effect of Fare Increases

The effect of the fare increases of the Market Street Railway in 1937, 1938, and 1939, particularly the 1938 increase, was to decrease the number of revenue passengers greatly, while the passenger revenue decreased at a lesser rate. From an operations viewpoint this was a benefit, since it was necessary to provide transportation for fewer passengers.

3. Loss of Passengers to Municipal Railway

As late as 1937 the Market Street Railway was carrying approximately two-thirds of the total regular-fare passengers carried by both the Market Street Railway and Municipal Railway. By May, 1943, this ratio had dropped until Market Street Railway was carrying slightly more than half the total.

4. Increase in Transfer Ratio

Table 3-2 shows that in the year 1941 the ratio of free transfer passengers to revenue passengers was 40.5 per cent, the highest in the last twenty years, while 1942 was almost as high.

5. Increased Use of Motor Coaches

The number of revenue passengers carried by motor coaches in 1938 was *less than 1 per cent* of the total carried, while by 1942, the motor coaches were carrying *almost 25 per cent* of all revenue passengers.

[fol. 377],

CHAPTER IV

Operating Expenses

Operating expenses are the expenses incurred in operating and maintaining the property used in furnishing trans-

portation. In the prescribed classification of accounts for electric railways they are segregated into the following six groups: I—Way and Structures, II—Equipment, III—Power, IV—Conducting Transportation, V—Traffic, and VI—General and Miscellaneous. That segregation is followed in this chapter. There is a minor credit to operating expense in respect of transportation for investment.

Depreciation expense is properly includible in the first three groups (in Accounts 25, 40, and 50) but it is not so included in the accounts of Market Street Railway Company, the accrual being charged instead to profit and loss.

The company's operating expenses for the year 1942 aggregated \$5,579,127, exclusive of taxes and depreciation. The following tabulation shows these expenses by types of service and by expense groups:

Operating Expenses—Year 1942

Expense Group	Electric Railway†	Cable Railway	Bus	System	% of Total
Way and Structures.....	\$217,918.39	\$23,848.80	\$1,331.99	\$243,099.18	4.36%
Equipment.....	250,085.41	22,637.66	188,414.29	461,147.36	8.26
Power.....	612,809.99	73,825.31	255,524.64	942,159.94	16.89
Conducting Trans.....	2,247,630.90	176,934.67	676,735.46	3,101,301.03	55.59
Traffic.....	1,227.20	90.62	435.30	1,753.12	0.03
General and Misc.....	598,435.77	42,678.82	196,390.59	837,505.18	15.01
Trans. for Invest.—Cr.....	7,838.72	.....	.....	7,838.72	+0.14
Total.....	\$3,920,278.94	\$340,015.88	\$1,318,832.27	\$5,579,127.09	100.0%
Per Cent of Total.....	70.27%	6.09%	23.64%	100.0%	

†Includes trolley coach line.

* Credit item.

Chart 4—1 shows the trend of operating expenses by groups over the period 1922-1942. Total operating expenses reached a peak of almost 8 million dollars in 1928, following which they declined steadily to slightly less than 6 million dollars in 1933, remaining almost constant at this level for five years, ending with 1937. They then decreased to a minimum of \$4,936,000 in 1941 and rose to \$5,579,000 in 1942.








(Here follows 1 photolithograph, side folio 378)

MARKET STREET RAILWAY COMPANY

GROSS OPERATING EXPENSES BY GROUPS

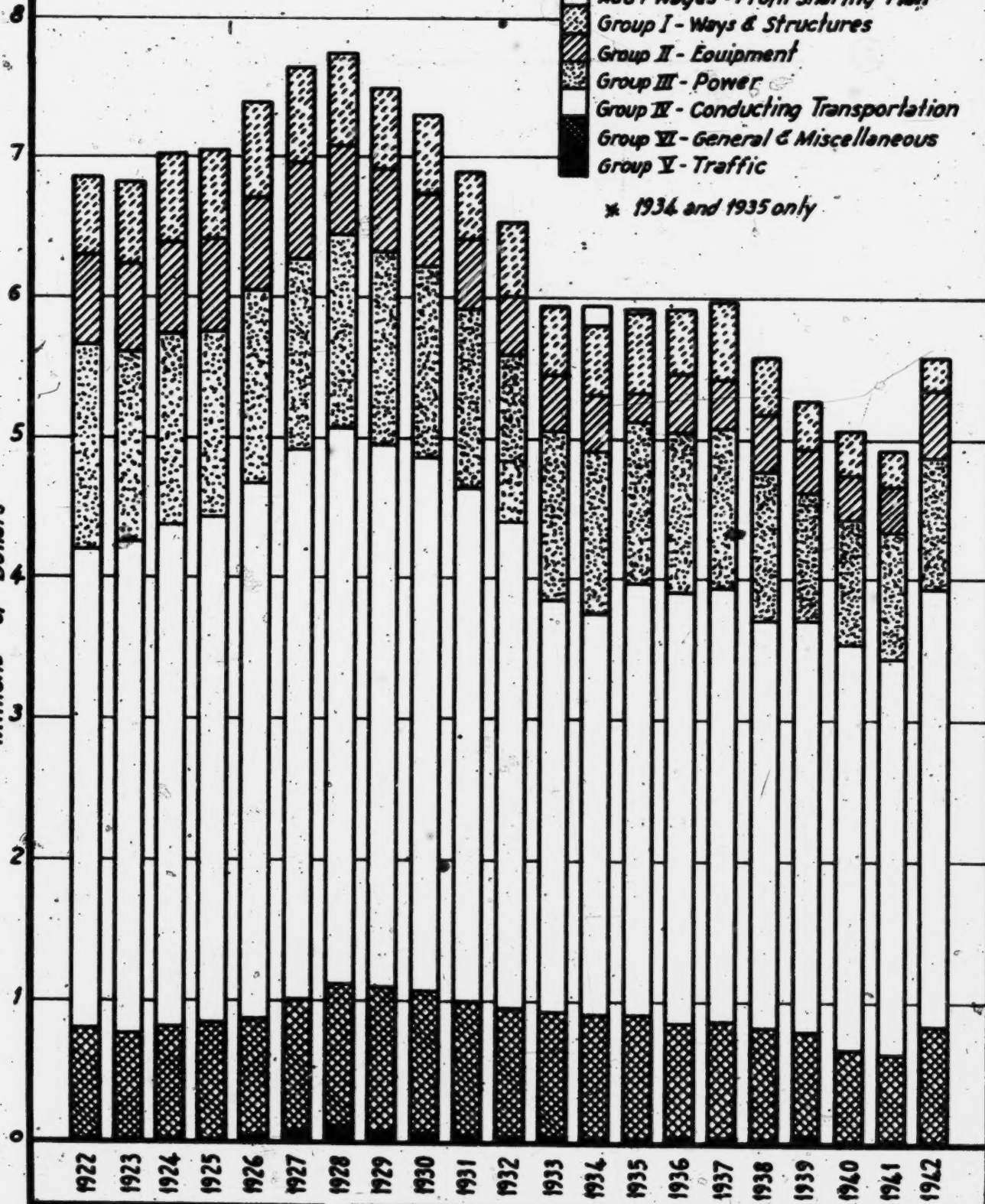
YEARS 1922 TO 1942

LEGEND

-  Add'l wages - Profit sharing Plan *
-  Group I - Ways & Structures
-  Group II - Equipment
-  Group III - Power
-  Group IV - Conducting Transportation
-  Group V - General & Miscellaneous
-  Group VI - Traffic

* 1934 and 1935 only

Millions of Dollars



[fol. 379] While the classification of accounts does not show "maintenance" and "operating" expenses directly, such a segregation may be obtained by including the maintenance portion of group III—Power, with groups I and II. The Market Street Railway Company's books are set up to show this segregation. Following this procedure maintenance expenses amounted to \$752,034 in 1942, or 13.5 per cent of total operating expense. By comparison, maintenance expenses of the San Francisco Municipal Railway were 13.5 per cent of total operating expense for the fiscal year 1941-1942, and Los Angeles Railway's maintenance expense for 1942 amounted to almost 21 per cent of its total operating expense.

Maintenance expense has ranged from a maximum of \$1,418,000 in 1927 to a minimum of \$668,000 in 1941, and the percentage of total operating expense has ranged from a maximum of 19 per cent in the years 1923-1927 to a minimum of 13 to 14 per cent in the years 1939 to 1942. Maintenance expense was lower in each of the last four years (1939-1942) than in any of the preceding 17 years.

Chart 4-2 shows graphically the trends of the several components of maintenance expense over the period 1922-1942. In the chart the way and structures group has been divided into three components, namely, track, line, and structures, and a portion of Account I, Superintendence of Way and Structures, is included with each component in accordance with the company's records.

The trends of the several expense groups and of the principal accounts over a number of years are portrayed in both tabular and graphic form in the sections which follow. Trends of the various expenses of Market Street Railway are compared on a unit basis with the corresponding expenses of the San Francisco Municipal Railway and of Los Angeles Railway Corporation. Los Angeles Railway Corporation's share of Los Angeles Motor Coach Company is not included in the data portrayed herein:


A Way and Structures

The way and structures group includes the cost of maintaining the roadway, electric lines, and structures, including the costs of materials, labor and superintendence. Table 4—1 shows the charges to this group, by accounts for the years 1941 and 1942 and for the 12 months ended May

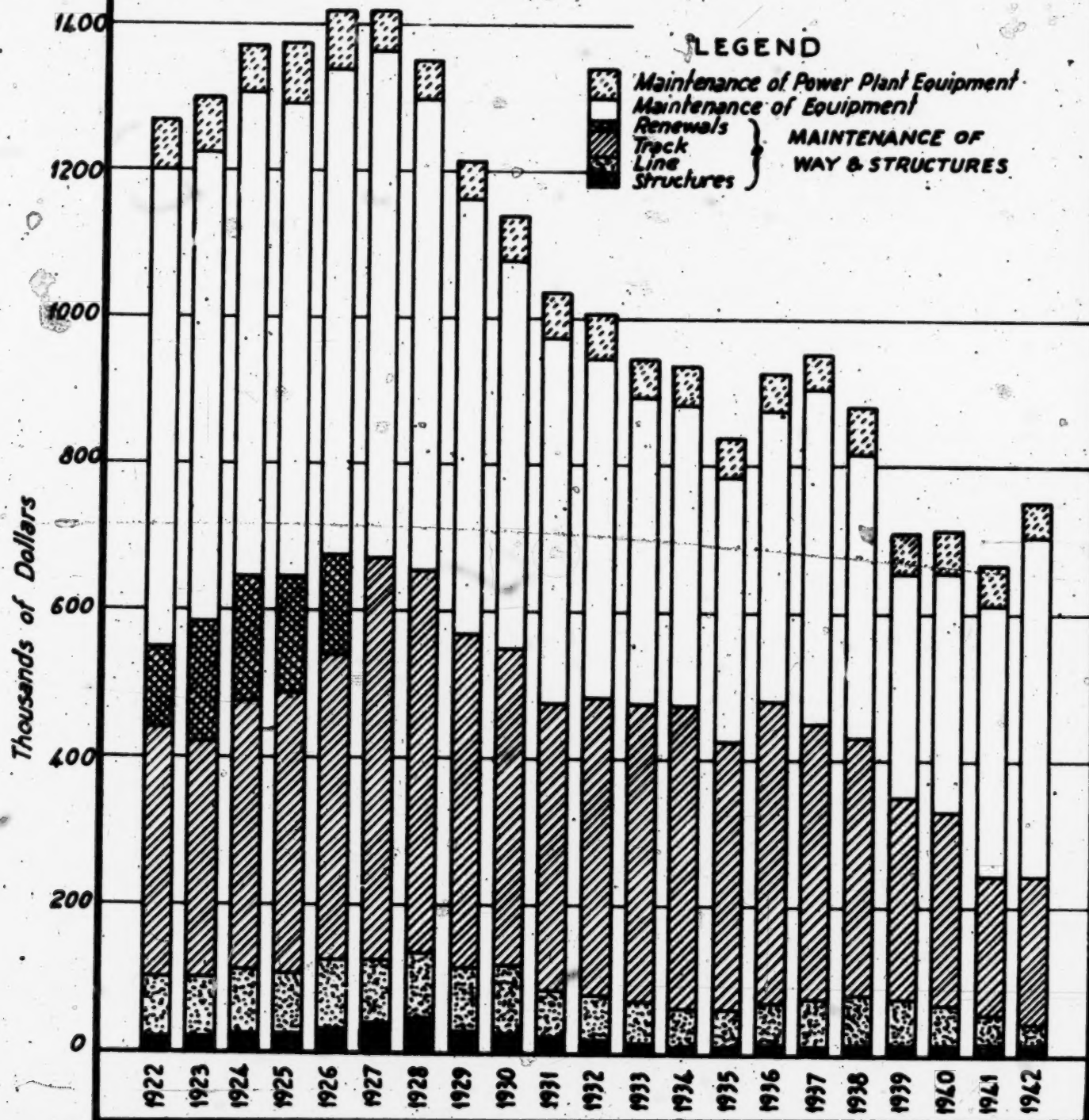
31, 1943. The expenses for the years 1941 and 1942 were approximately equal, and considerably lower than 1940. The year ended May 31, 1943, is 7 per cent above 1942 but 21 per cent below 1940.

Table 4-2 shows the trend of way and structures expense from 1922 to 1942, both in total amount and in per cent of total operating expense, together with unit costs per car-mile, per car-hour, and per mile of track. The company has not allocated any of this expense to bus operations except in the years 1940, 1941, and 1942, when amounts ranging from \$1,300 to \$2,800 in Account 24-1, Carhouses, were so allocated. In view of this, only rail car-miles and carhours have been used in computing the unit costs.

(Here Follows 1 Photolithograph Side Folio 380)



MARKET STREET RAILWAY COMPANY
MAINTENANCE EXPENSES
YEARS 1922 TO 1942



IV—Operating Expenses
Market Street Railway Company
Analysis of Operating Expenses
Group I—Maintenance of Ways and Structures
1941, 1942 and 12 Months Ended May, 1943

1941, 1942 and 12 Months Ended May, 1943								
Ac. No.	Account	1941		1942		12 Months Ended May 31, 1943†		
		Amount		Amount		%		
	Maintenance of Track	\$27,402.48		\$19,914.99		\$21,706.91		8.4
1-1	Superintendence of Track							0.1
2	Ballast	66.72		113.16		179.16		0.1
3	Ties	549.45		721.82		1,140.44		0.4
4	Rails	257.22		1,695.03		515.79		0.2
5	Rail fastenings and joints	8,764.48		9,248.08		11,426.58		4.4
6	Special Work	138.29		550.61		1,032.13		0.4
7	Underground Construction	1,255.19		1,094.28		460.50		0.2
8	Track and Roadway Labor	98,963.84		106,032.04		106,452.38		41.1
9	Misc. Track and Roadway Exp.	3,906.68		4,641.63		4,754.20		1.8
10	Paving	31,616.43		42,720.25		44,688.76		17.2
11	Cleaning and Sanding Tracks	17,017.82		15,996.47		16,924.42		6.5
15	Bridges, Trestles and Culverts			39.71		28.36		...
16	Crossings, Fences and Signs	292.19		18.22		207.24		0.1
17	Signal and Interlocking Apparatus	1,704.42		1,850.81		1,986.05		0.8
	Total Maintenance of Track	191,935.21		201,247.04		211,502.92		81.6
	Maintenance of Line							
1-2	Superintendence of Overhead Lines	7,982.38		4,532.08		4,626.20		1.8
20	Poles and Fixtures	7,874.67		3,049.57		4,621.16		1.7
22-1	Overhead Feeders	1,423.10		277.77		370.36		0.1
22-2	Underground Feeders	312.98		362.93		8.85		...
22-3	Track Bonding	289.59		627.34		669.22		0.3
22-4	Overhead Trolley	21,820.81		18,709.32		20,922.11		8.1

Ac. No.	Account	12 Months Ended May 31, 1943†		
		1941	1942	Amount %
22	Subtotal Distribution System.....	23,846.48	19,421.82	21,970.54 8.5
	Total Maintenance of Line.....	39,703.53	27,003.47	31,217.90 12.0
1-3	Maintenance of Structures			
24-1	Superintendence of Structures.....	1,834.03	1,868.81	1,926.87 0.8
24-2	Carhouses.....	6,557.32	10,558.97	11,403.33 4.4
24-3	Shops.....	1,727.26	869.15	740.86 0.3
24-3	Stations and Waiting Rooms.....	662.50	346.72	172.86 0.1
24-4	Miscellaneous.....	3,237.69	1,205.02	2,227.85 0.8
24	Subtotal—Bldgs., Fixtures and Grounds.....	12,184.77	12,979.86	14,544.90 5.6
	Total Maintenance of Structures.....	14,018.80	14,848.67	16,471.77 6.4
	Total Maint. of Way and Structures.....	245,657.54	243,099.18	259,192.59 100.0
	Index.....	100	99	106

* Red figure. † May, 1943, figures are tentative.

(Here Follows 1 Photolithograph Side Folio 382)

**MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
GROUP I - WAY AND STRUCTURES ***

TABLE 4-2

: Year :	: Amount :	: Index : (1928 = 100)	: Cost : per : :Car-Mile#:	: Cost : per : :Car-Hour#:	: Cost per : Mile of : Track :	: Per Cent : of Total : Operating : Expense :
1922	\$550,367.98	84	2.19¢	19.7¢	\$1,908	8.02%
1923	585,426.70	86	2.31	20.7	2,032	8.57
1924	644,916.19	98	2.50	22.5	2,239	9.17
1925	643,878.25	98	2.49	22.4	2,231	9.13
1926	674,210.73	103	2.54	22.8	2,336	9.12
1927	671,390.93	102	2.52	22.5	2,354	8.79
1928	656,462.25	100	2.48	22.3	2,315	8.47
1929	574,991.78	88	2.21	20.2	2,043	7.70
1930	548,853.89	84	2.16	19.8	1,964	7.53
1931	476,423.26	73	1.96	18.2	1,704	6.94
1932	483,094.12	74	2.04	19.4	1,695	7.39
1933	474,124.23	72	2.08	20.1	1,664	7.98
1934	473,671.33	72	2.16	20.9	1,657	7.97
1935	424,710.27	65	1.94	20.0	1,554	7.20
1936	482,469.19	73	2.37	22.3	1,793	8.15
1937	451,172.76	69	2.31	21.4	1,695	7.55
1938	430,533.07	66	2.41	22.4	1,621	7.71
1939	349,941.90	53	2.17	20.5	1,376	6.64
1940	329,429.54*	50	2.38	22.5	1,307	6.50
1941	245,657.54*	37	2.05	19.2	1,051	4.98
1942	243,099.18*	37	2.06	18.9	1,107	4.36

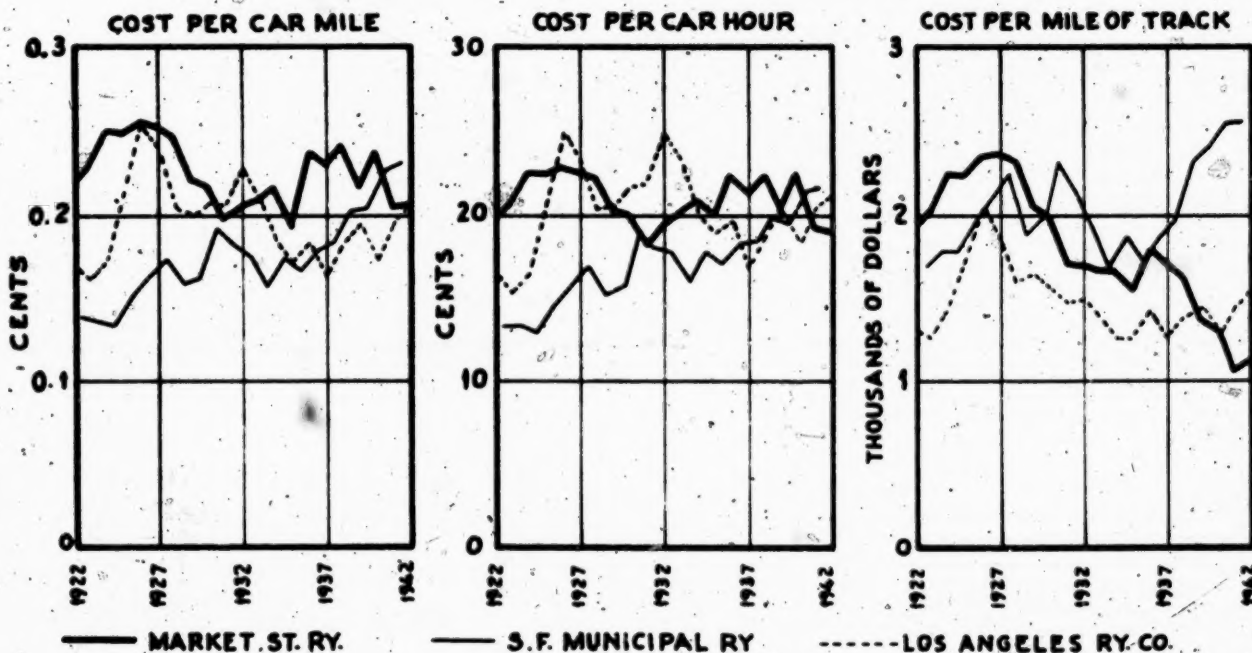
*Includes minor amounts for motor coach operations in Account 24-1, Carhouses, as follows:

1940 \$1,759
1941 \$2,832
1942 \$1,332

#Rail and trolley coach

GROUP I

WAY AND STRUCTURES



[fol. 383] At the bottom of Table 4—2 are three graphs comparing the Market Street Railway's unit costs for the way and structures group with those of the San Francisco Municipal Railway and Los Angeles Railway over a like period. In general the Market Street's unit costs have been as high as those of the other two companies except that in the last few years the expense per mile of track has been decreasing steadily and is now lower than in either of the other companies. The Municipal Railway's way and structures expense per car-mile and per car-hour was low in the early years, undoubtedly because the property was relatively new, but has been increasing and is now at approximately the same level as for the other two companies.

Account 1—Superintendence of Way and Structures

This account includes the salaries and expenses of officers and their assistants in charge of maintenance of way and structures. The charges for April, 1943, included the following salaries:

Vice president in charge of operations	33-1/3%
Superintendent of track	100
Superintendent of equipment	20
Sup't. of motive power and overhead lines	25
Superintendent of records	50
Assistant superintendent of lines	100
Two general foremen	100

Table 4—3 shows the trends of this account for the period 1922-1942. The account was highest in 1928 and has dropped sharply in the last two years, 1942 charges being only half as great as in 1928. The trends of cost per car-mile, per car-hour, and per mile of track for the Market Street Railway Company are shown in the table, and in the graphs below the table these three indices are compared with the Municipal and Los Angeles railways.

Market Street's costs per car-mile and per car hour have been consistently higher than those of the Municipal Railway, but lower than those of Los Angeles Railway, except in the last six or seven years. The costs of all three companies per mile of track have been quite comparable since 1936, except for high costs in Municipal Railway during two years.

Account 8—Track and Roadway Labor

Track and roadway labor amounted to 44 per cent of way and structures expense and 1.9 per cent of total operating expense in 1942. The charges to this account in 1941 and 1942 were less than half those of the peak year 1928. Referring to Table 4—4, the costs per car-mile and per car-hour were highest in the period 1936-1938. The present unit costs compare closely with those of the Municipal

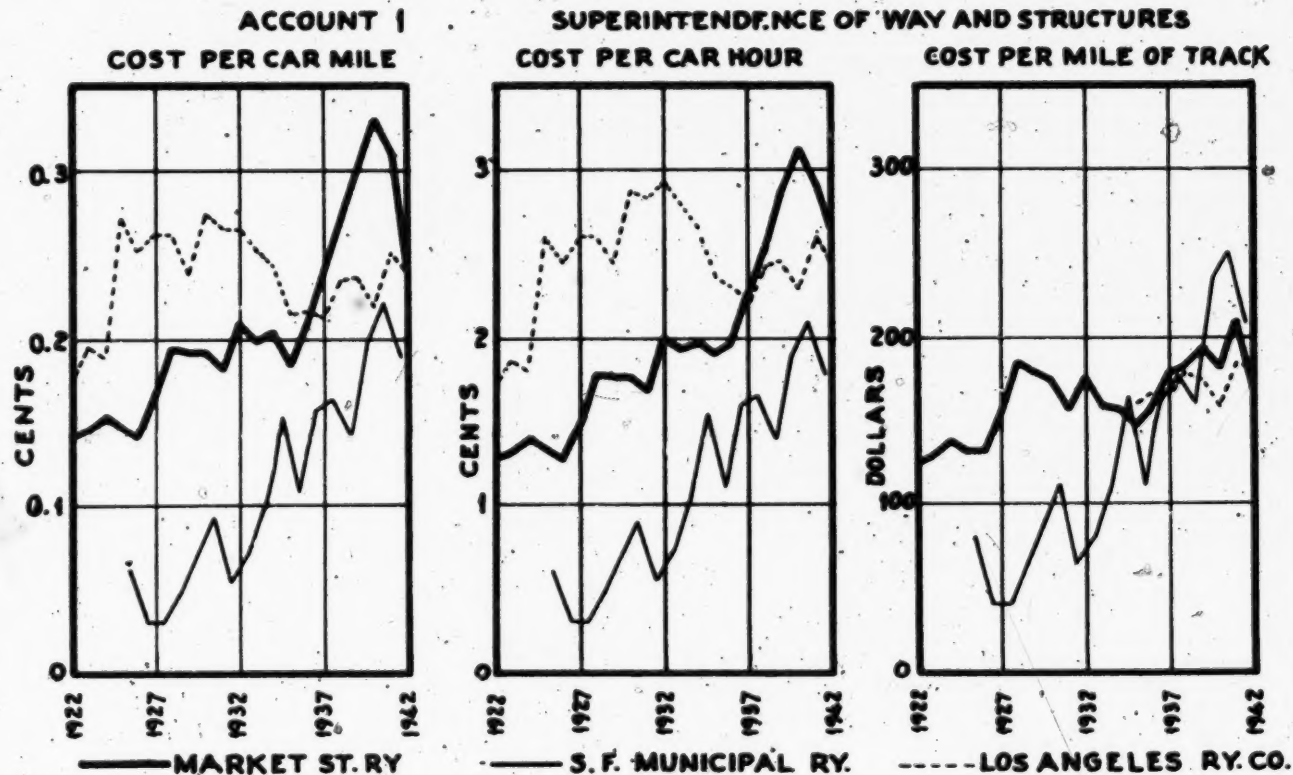
(Here Follows 2 Photolithographs, Side Folios 384-385)

TABLE 4-3

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 1 - SUPERINTENDENCE OF WAY AND STRUCTURES

Year	Amount	Index (1928 = 100)	Cost per Car-Mile	Cost per Car-Hour	Cost per Mile of Track	Per Cent of Group I	Total Operating Expenses
1922	\$ 35,930.23	68	0.143¢	1.29¢	\$125	6.53%	0.52%
1923	37,037.70	71	0.146	1.31	129	6.33	0.54
1924	39,737.84	76	0.154	1.39	138	6.16	0.56
1925	38,239.11	73	0.148	1.33	132	5.94	0.54
1926	37,736.76	72	0.142	1.27	131	5.60	0.51
1927	44,121.00	84	0.165	1.48	155	6.57	0.58
1928	52,488.25	100	0.198	1.79	185	8.00	0.68
1929	50,346.51	96	0.193	1.77	179	8.76	0.67
1930	49,028.64	93	0.193	1.77	175	8.93	0.67
1931	44,196.81	84	0.182	1.69	158	9.28	0.64
1932	49,415.78	94	0.209	1.99	173	10.23	0.75
1933	45,420.04	87	0.199	1.93	159	9.58	0.76
1934	44,720.68	85	0.204	1.97	156	9.44	0.75
1935	40,481.31	77	0.185	1.91	148	9.53	0.69
1936	42,544.78	81	0.209	1.97	158	8.82	0.72
1937	47,667.86	91	0.244	2.26	179	10.57	0.80
1938	48,685.27	93	0.272	2.53	183	11.31	0.87
1939	48,930.20	93	0.303	2.87	192	13.98	0.93
1940	45,736.69	87	0.330	3.12	181	13.88	0.90
1941	37,218.89	71	0.310	2.91	159	15.15	0.75
1942	26,315.88	50	0.223	2.05	120	10.83	0.47

* Rail operations only

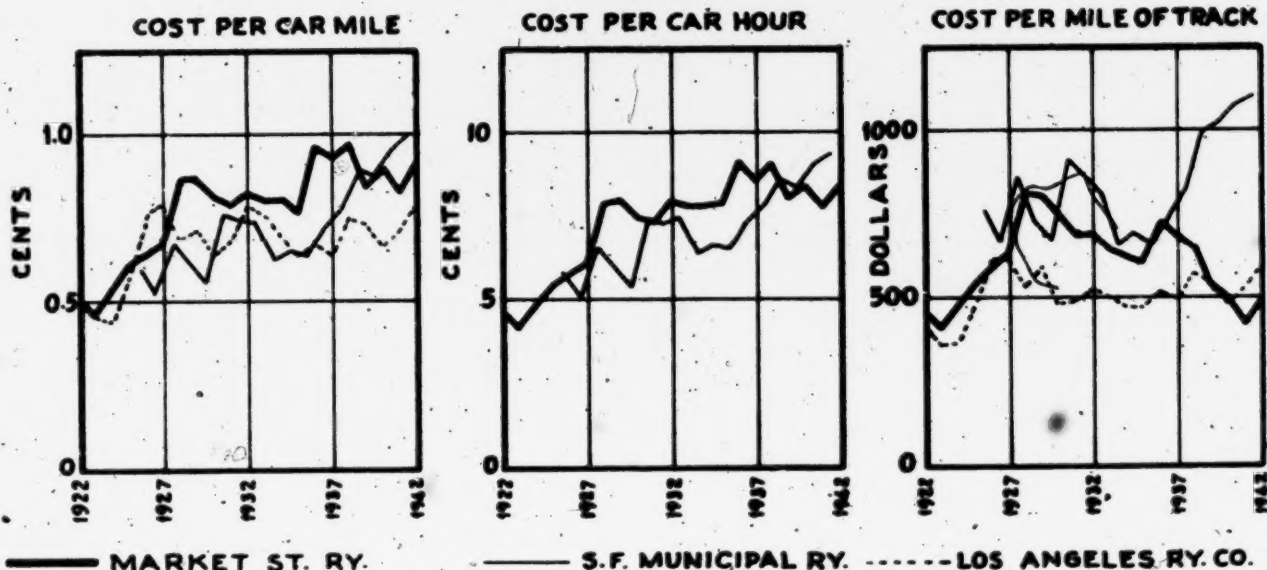


MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 8 - TRACK AND ROADWAY LABOR

Year	Amount	Index (1928 = 100)	Cost per Car-Mile*	Cost per Car-Hour*	Cost per Mile of Track	Per Cent of Group I	Total Operating Expenses:
1922	\$129,733.12	56	0.517¢	4.61¢	\$450	23.57%	1.89%
1923	117,580.60	51	0.463	4.15	408	20.08	1.72
1924	137,619.99	60	0.534	4.80	478	21.34	1.96
1925	154,983.16	67	0.601	5.38	537	24.07	2.20
1926	169,606.79	74	0.638	5.73	588	25.16	2.29
1927	177,404.27	77	0.665	5.96	622	26.42	2.32
1928	229,814.13	100	0.867	7.82	810	35.01	2.97
1929	221,738.80	98	0.863	7.90	798	39.09	3.01
1930	206,322.78	90	0.812	7.45	738	37.59	2.83
1931	190,104.86	83	0.781	7.27	680	39.90	2.77
1932	195,600.29	85	0.826	7.86	686	40.49	2.99
1933	182,358.74	79	0.798	7.75	640	38.46	3.07
1934	175,789.83	76	0.802	7.75	615	37.11	2.96
1935	165,312.98	72	0.754	7.78	605	38.92	2.80
1936	194,923.73	85	0.959	9.02	725	40.40	3.29
1937	181,290.17	79	0.929	8.61	681	40.18	3.04
1938	172,636.80	75	0.965	8.98	650	40.10	3.09
1939	135,812.10	59	0.842	7.97	534	38.81	2.58
1940	123,305.56	54	0.891	8.41	489	37.43	2.43
1941	98,963.84	43	0.824	7.74	424	40.28	2.00
1942	106,032.04	46	0.898	8.25	483	43.62	1.90

* Rail operations only

COMPARISON OF UNIT COSTS



[fol. 386] Railway, except the cost per mile of track. For the past few years the Municipal's expense per mile of track has been about double that of the Market Street Railway and Los Angeles Railway.

Account 10—Paving

This account includes the cost of labor and material used in repairing paving, as well as the cost of transporting paving material and the old material removed. The April, 1943, charges consisted of about 70 per cent labor and 30 per cent material.

Table 4-5 shows the trend of this account over the past 21 years, including costs per car-mile, per car-hour, and per mile of track. The expense reached a sharp peak of \$149,000 in 1927. From 1931 to 1938 it ranged between \$70,000 and \$83,000 per year but since 1938 has dropped to a much lower level. The costs per car-mile and per car-hour are about double those of the Municipal Railway but the cost per mile of track has been quite comparable to the Municipal's for the past four years.

Account 22—Distribution System

This account includes labor and material used in repairing the distribution system, including overhead and underground feeders, overhead trolley, and track bonding. Repairs of overhead trolley accounted for 96 per cent of the total 1942 charges, which amounted to \$19,422. Referring to Table 4-6 it may be seen that this expense has in the last two years decreased greatly from the 1933-1940 level. The costs per car-mile, per car-hour, and per mile of track are compared with those of the Municipal and Los Angeles railways in graphs at the bottom of the table. Market Street Railway's unit costs have on the whole been comparable with those of Los Angeles Railway but considerably lower than those of the Municipal Railway, particularly the cost per mile of track, and while the Market Street's unit costs have decreased in 1941 and 1942, the Municipal's have increased considerably.

B. Equipment

In this group are charged the costs of maintaining the equipment used in furnishing transportation, including passenger and service cars, coaches, and autos. The costs

include labor, materials, and superintendence of the work. Table 4-7 shows these charges, by accounts for the years 1941 and 1942, and the 12 months ended May 31, 1943.

Equipment maintenance expense for the 12 months ended May 31, 1943, was 22 per cent higher than in 1942 and 53 per cent higher than 1941. Most of the increase has been in Account 30—Passenger Cars and Coaches.

(Here follow 2 photolithographs, side folios 387-388)

Table 4-3

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 10 - PAVING

Year	Amount	Index (1928 = 100)	Cost per Car-Mile	Cost per Car-Hour	Cost per Mile of Track	Per Cent of Group I	Per Cent of Total Operating Expense
1922	\$ 77,607.56	60	0.309¢	2.78¢	\$269	14.10%	1.13%
1923	71,418.68	55	0.281	2.52	248	12.20	1.05
1924	86,820.93	67	0.337	3.03	301	13.46	1.23
1925	81,763.85	63	0.317	2.84	283	12.70	1.16
1926	97,441.08	75	0.367	3.29	338	14.45	1.32
1927	149,181.91	115	0.559	5.01	523	22.22	1.95
1928	129,808.81	100	0.490	4.42	458	19.77	1.68
1929	106,286.05	82	0.408	3.73	378	18.48	1.42
1930	95,965.46	74	0.378	3.47	343	17.48	1.32
1931	82,198.49	63	0.338	3.14	294	17.25	1.20
1932	76,158.70	59	0.322	3.06	267	15.76	1.17
1933	76,584.62	59	0.335	3.25	269	16.15	1.29
1934	77,541.82	60	0.354	3.42	271	16.37	1.31
1935	73,367.28	57	0.334	3.45	268	17.27	1.24
1936	83,031.49	64	0.408	3.84	309	17.21	1.40
1937	73,353.63	57	0.376	3.48	276	16.26	1.23
1938	70,189.17	54	0.392	3.65	264	16.30	1.26
1939	47,919.51	37	0.297	2.81	188	13.69	0.91
1940	51,455.25	40	0.372	3.51	204	15.62	1.02
1941	31,616.43	24	0.263	2.47	135	12.87	0.64
1942	42,720.25	33	0.362	3.32	195	17.57	0.77

* Rail operations only

COMPARISON OF UNIT COSTS

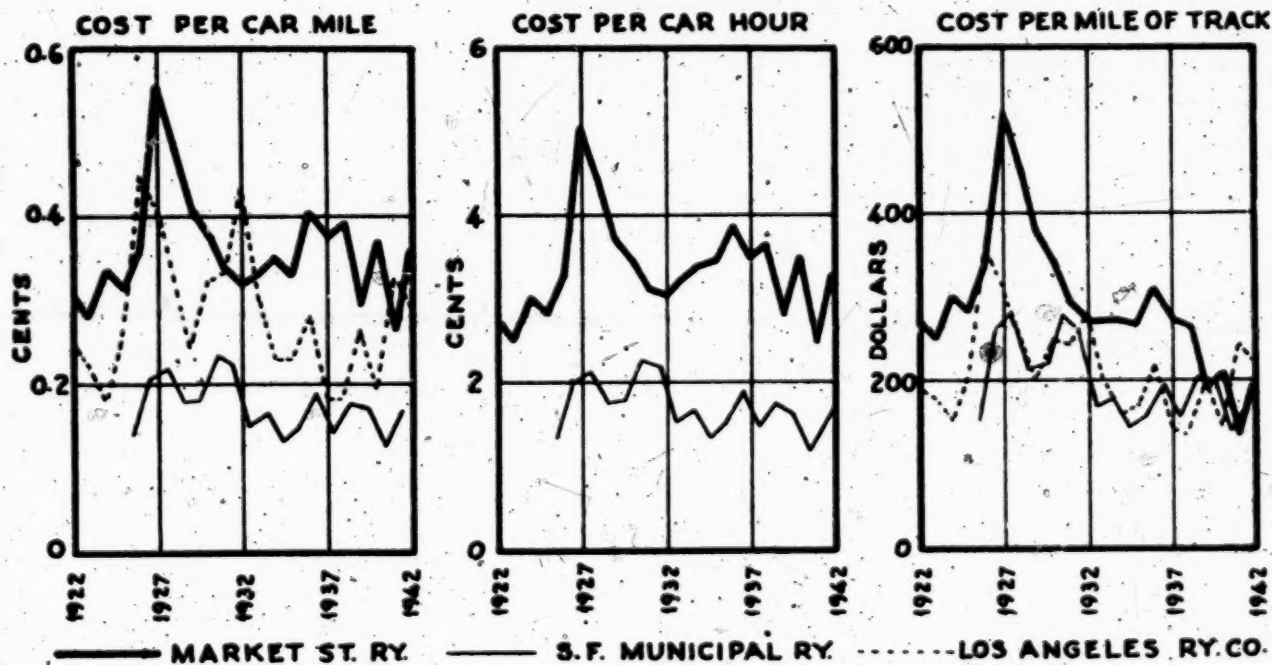


Table 4-6

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 22 - DISTRIBUTION SYSTEM

: Year :	Amount	: Index : :(1928 = : : 100)	: Cost : : per : : Car-Mile*	: Cost : : per : : Car-Hour*	: Cost : : per Mile: : of : : Track	: Per Cent of : : Group : : I	: Total : : Operating: : Expense :
1922	\$ 61,194.58	101	0.244¢	2.19¢	\$212	11.12%	0.89%
1923	59,627.37	98	0.235	2.11	207	10.19	0.87
1924	67,671.29	112	0.263	2.36	235	10.49	0.96
1925	61,704.16	102	0.239	2.14	214	9.58	0.87
1926	66,196.11	109	0.249	2.24	229	9.82	0.90
1927	63,794.51	105	0.239	2.14	224	9.50	0.83
1928	60,581.64	100	0.229	2.06	214	9.23	0.78
1929	58,810.23	97	0.226	2.07	209	10.23	0.79
1930	66,360.89	110	0.261	2.40	237	12.09	0.91
1931	45,046.01	74	0.185	1.72	161	9.45	0.66
1932	40,164.38	66	0.170	1.61	141	8.31	0.61
1933	37,576.00	62	0.165	1.60	132	7.93	0.63
1934	31,786.48	52	0.145	1.40	111	6.71	0.53
1935	35,320.76	58	0.161	1.66	129	8.32	0.60
1936	31,164.04	51	0.153	1.44	116	6.46	0.53
1937	37,124.67	61	0.190	1.76	139	8.23	0.62
1938	39,115.24	65	0.219	2.04	147	9.08	0.70
1939	37,544.90	62	0.233	2.20	148	10.73	0.71
1940	33,216.01	55	0.240	2.27	132	10.08	0.55
1941	23,846.48	39	0.199	1.87	102	9.71	0.48
1942	19,421.82	32	0.164	1.51	84	7.99	0.35

* Rail operations only

COMPARISON OF UNIT COSTS

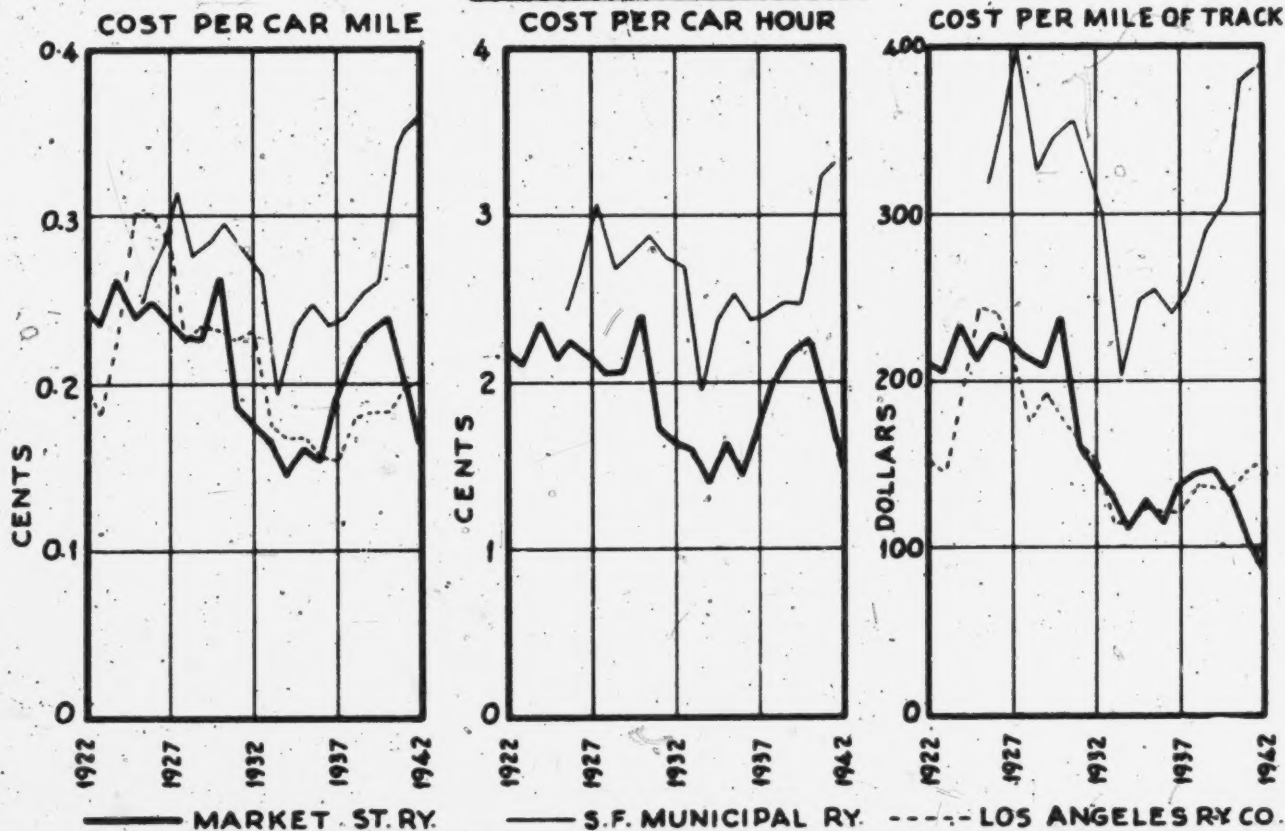


Table 4-7

IV—Operating Expenses
 Market Street Railway Company
 Analysis Operating Expenses
 Group II—Maintenance of Equipment
 1941, 1942, and 12 Months Ended May, 1943

Ac. No.	Account	1941	1942	12 Months Ended May 31, 1943*
29	Superintendence of Equipment.....	\$18,272.77	\$18,136.78	Amount \$21,002.87 % 3.8
30	Passenger Cars and Coaches.....	216,387.81	289,628.69	367,754.56 65.6
32	Service Cars.....	374.37	98.49	90.76
33	Electric Equipment of Cars*	95,062.50	114,980.74	129,215.87 23.0
36	Shop Equipment.....	4,977.08	3,169.48	4,115.12 0.7
37	Shop Expense.....	26,300.03	26,875.66	29,692.18 5.3
38	Autos.....	6,160.83	8,257.52	9,071.16 1.6
	Total Maintenance of Equipment.....	\$367,625.39	\$461,147.36	\$560,942.52 100.0
	Index.....	100	125	153

* Includes cable equipment of cable cars.

* May, 1943, figures are tentative.

[fol. 390] Table 4-8 shows the trend of equipment maintenance expense from 1922 to the present, also the costs per car-mile, per car-hour, and per 100 passengers and the group as per cent of total operating expense, exclusive of depreciation and taxes. Equipment maintenance amounted to 8.3 per cent of total operating expense in 1942.

The charges to this group reached a peak in 1927 of almost \$700,000. From that time the expenses declined almost continuously to a minimum of \$307,000 in 1939, following which it has increased to \$461,000 in 1942. The increase reflects increased motor coach maintenance as the maintenance of rail equipment continued to decline through 1941 and rose only slightly in 1942 (See Table 4-9). In 1942 bus operations accounted for 41 per cent of total equipment maintenance expense.

Tables 4-9 and 4-10 show the respective trends of rail and bus equipment maintenance over the years, in total and on a unit basis, and, for the rail equipment, graphic comparisons of unit costs with those of the Municipal and Los Angeles railways. The extent of bus operations by the Market Street Railway prior to 1940 was so small compared to the present that detailed comparisons for earlier years would show little. Hence, at the bottom of Table 4-10 equipment maintenance costs per bus-mile and per bus-hour in the Market Street and Municipal railways are compared for the years 1940, 1941, and 1942. The Los Angeles Railway follows a different accounting classification for its bus maintenance expense; hence its expense is not directly comparable with that of Market Street Railway.

Referring to Table 4-9, Market Street's maintenance expense for rail equipment, per car-mile and per car-hour, has compared quite closely with that of the Municipal Railway, but has been considerably lower than that of Los Angeles Railway since 1924.

Account 29—Superintendence of Equipment

To this account are charged the following salaries of supervisory personnel:

Vice president in charge of operations	33 $\frac{1}{3}$ %
Superintendent of equipment	80
Assistant superintendent of equipment	100

The account is relatively small, amounting to about \$18,000 in 1942.

Account 30—Passenger and Combination Cars

This account includes the cost of labor and material used in repairing passenger cars and coaches. It represented 63 per cent of total equipment maintenance in 1942. Motor coach maintenance accounted for 66 per cent of the April, 1943, charges.

[fol. 391]

Table 4-8

IV—Operating Expenses Market Street Railway Company Analysis of Operating Expenses Group II—Equipment Rail and Bus Operations

Year	Amount	Index (1928=100)	Cost per Car-Mile*	Cost per Car-Hour*	Cost per 100 Pas- sengers#	Per Cent of Total Operating Expense
1922	\$649,486.56	101	2.59¢	23.3¢	25.6¢	9.47%
1923	640,938.72	100	2.52	22.6	24.6	9.38
1924	660,126.73	103	2.56	23.0	25.2	9.38
1925	648,008.86	101	2.51	22.5	24.5	9.19
1926	663,643.98	103	2.50	22.4	25.0	8.98
1927	691,269.52	107	2.59	23.2	26.2	9.05
1928	643,191.71	100	2.40	21.7	24.6	8.30
1929	587,230.25	91	2.23	20.4	22.4	7.86
1930	529,807.43	82	2.06	18.9	21.1	7.27
1931	498,139.65	77	2.02	18.8	21.1	7.26
1932	465,059.33	72	1.93	18.4	21.4	7.12
1933	417,914.08	65	1.80	17.4	20.1	7.04
1934	407,033.27	63	1.82	17.6	19.8	6.85
1935	359,745.85	56	1.61	16.6	17.4	6.09
1936	393,455.09	61	1.90	17.9	18.4	6.65
1937	452,873.19	70	2.28	21.1	24.1	7.58
1938	385,469.04	60	2.40	19.6	26.7	6.90
1939	307,305.91	48	1.83	17.3	23.7	5.83
1940	329,246.56	51	1.93	18.7	26.4	6.50
1941	367,625.39	57	2.18	21.0	29.1	7.45
1942	461,147.36	72	2.66	24.8	29.6	8.27

* Rail and bus operations combined.

Total passengers—rail and bus.

(Here follows 1 photolithograph side folio 392).

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
GROUP II - EQUIPMENT

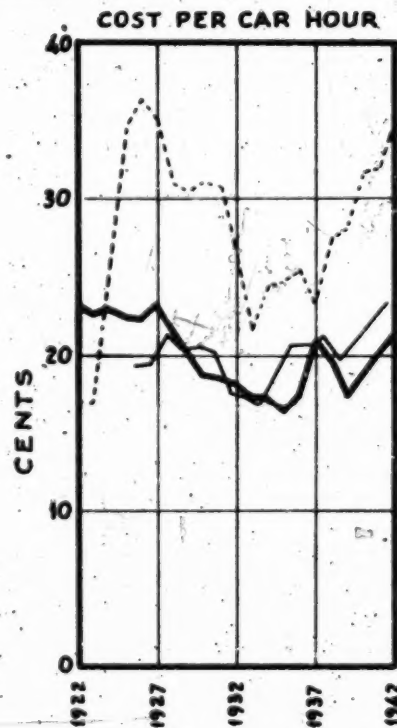
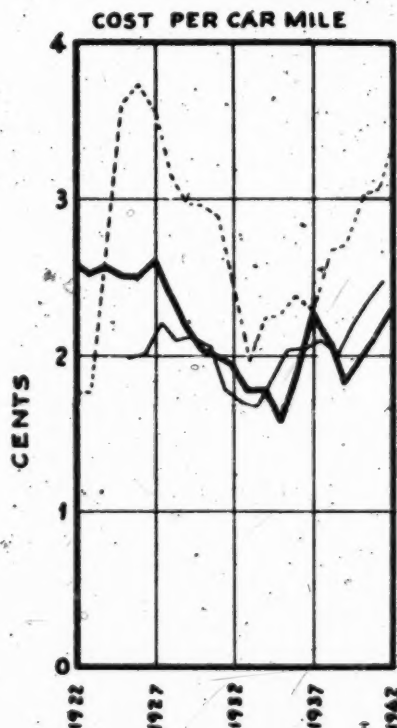
Table 4-9

RAIL OPERATIONS

: Year :	Amount	: Index : (1928=100)	: Cost : per Car-Mile*	: Cost : per Car-Hour*	: Cost : per 100 Pas- sengers#	: Per Cent : of Total : Operating : Expense :
1922	\$649,186.56	103	2.59¢	23.3¢	25.6¢	9.47%
1923	640,938.72	102	2.52	22.6	24.6	9.38
1924	660,126.73	105	2.56	23.0	25.2	9.38
1925	648,008.86(a)	103	2.51	22.5	24.5	9.19
1926	663,643.98(a)	105	2.50	22.4	25.0	8.98
1927	691,269.52(a)	110	2.59	23.2	25.3	9.05
1928	629,993.67	100	2.38	21.4	24.1	8.13
1929	569,233.67	90	2.19	20.0	21.9	7.62
1930	516,663.90	82	2.03	18.7	20.8	7.09
1931	481,983.52	77	1.99	18.6	20.7	7.07
1932	456,284.55	72	1.93	18.3	21.2	6.98
1933	406,435.42	65	1.78	17.3	19.8	6.84
1934	392,730.99	62	1.79	17.3	19.4	6.61
1935	345,911.44	55	1.58	16.3	16.9	5.86
1936	380,344.85	60	1.87	17.6	18.0	6.43
1937	444,039.95	70	2.28	21.1	23.9	7.44
1938	378,629.49	60	2.12	19.7	26.5	6.78
1939	294,696.10	47	1.83	17.3	23.5	5.59
1940	274,348.71	44	1.98	18.7	25.3	5.42
1941	255,589.14	41	2.13	20.0	26.3	5.18
1942	272,733.07	43	2.30	21.2	24.0	4.89

- * Rail operations only
Total rail passengers
(a) Includes minor bus operations

COMPARISON OF UNIT COSTS



[fol. 393]

Table 4-10

IV—Operating Expenses

Market Street Railway Company

Analysis of Operating Expenses

Group II—Equipment

Bus Operations

Year	Amount	Index (1928 = 100)	Cost per Bus-Mile	Cost per Bus-Hour	Cost per 100 Bus Pas- sengers	Per Cent of	
						Group II	Total Operating Expenses
1928	\$13,198.04	100	4.96¢	47.3¢	.....	.....	0.17%
1929	17,996.58	136	6.38	61.7	87.4¢	3.06%	0.24
1930	13,143.53	100	4.98	44.9	65.5	2.48	0.18
1931	13,156.13	100	4.60	45.1	67.5	3.64	0.19
1932	8,774.78	66	2.10	20.3	35.2	1.89	0.13
1933	11,478.66	87	2.77	26.8	44.6	2.75	0.19
1934	14,302.28	108	3.52	33.6	54.1	3.51	0.24
1935	13,834.41	105	3.63	34.8	56.3	3.85	0.23
1936	13,110.24	99	3.66	36.4	46.4	3.33	0.22
1937	8,833.24	67	2.34	23.4	47.7	1.95	0.15
1938	6,839.55	52	1.56	16.4	37.5	1.77	0.12
1939	12,609.81	96	1.82	17.7	28.7	4.10	0.24
1940	54,897.85	416	1.72	18.4	33.9	16.68	1.08
1941	112,036.25	849	2.31	23.6	38.6	30.48	2.27
1942	188,414.29	1,428	3.41	32.6	44.5	40.86	3.38

Comparison of Unit Costs

Year	Cost per Bus-Mile		Cost per Bus-Hour	
	Market- Street Railway	Municipal*	Market- Street Railway	Municipal*
1940.....	1.72¢	2.67¢	18.4¢	27.2¢
1941.....	2.31	3.06	23.6	32.1
1942.....	3.41	3.10	32.6	33.4

* Fiscal year ended June 30.

[fol. 394] • Table 4-11 shows the trend of electric and cable car maintenance, together with unit cost comparisons, for the period 1922-1942. The 1941 and 1942 charges are less than one-third those of the peak years 1927 and 1928. On a car-mile and car-hour basis Market Street's expenditures have been considerably lower than those of either the Municipal or Los Angeles railways in recent years.

Account 30 was the only account receiving charges for bus maintenance prior to 1939, and the highest of such charges was approximately \$18,000 in 1929. The follow-

ing tabulation shows the growth of bus maintenance, and the relation of Account 30 to the total, since 1938.

Year	Account 30	Total Bus Equipment Maintenance	Buses as of December, 1931
1938	\$ 6,840	\$ 6,840	11
1939	11,818	12,610	54
1940	47,724	56,657	76
1941	100,196	114,869	115
1942	175,268	189,746	125

Account 33—Electric Equipment of Cars

This account includes the cost of labor and material used in repairing the electric motive equipment and electric motive wiring of all cars and trolley coaches. The account represented 25 per cent of equipment maintenance costs in 1942. About 57 per cent of the April, 1943, charges represented labor.

Table 4-12, shows the trend of charges to Account 33 for the past 21 years, and the costs per car-mile, per car-hour, and per 100 passengers. Comparing the unit costs, Market Street's are the highest and Municipal's the lowest of the three. The trend of unit costs has been generally upward since 1933.

C—Power

This group of expenses includes the cost of electric power purchased, fuel and lubricants for motor coaches, cables for cable railway operation (superintendence), and the cost of operating and maintaining power plants and substations. The charges to the power group for the years 1941 and 1942 and the 12 months ended May 31, 1943, are shown in Table 4-12A.

It may be seen from the table that the cost of electric power represented 61 per cent of the group in the year ended May 1943 and, together with motor coach fuel and cables, accounted for almost 90 per cent of the total charges.

(Here follow 2 photolithographs, side folios 395-396)

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 30 - PASSENGER AND COMBINATION CARS

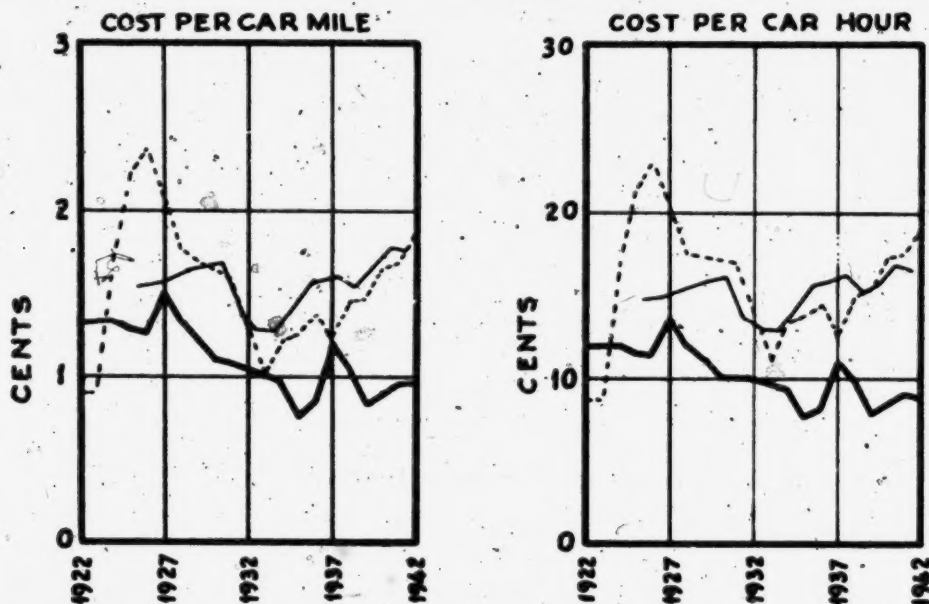
Table 4-11

RAIL OPERATIONS

Year	Amount	Index (1928=100)	Cost per Car-Mile*	Cost per Car-Hour*	Cost per 100 Pass- engers#	Per Cent of Group II	Total Operating Expenses:
1922	\$331,286.37	94	1.32¢	11.9¢	13.0¢	51.01%	4.83%
1923	337,377.03	95	1.33	11.9	13.0	52.64	4.94
1924	343,011.00	97	1.33	12.0	13.0	51.96	4.87
1925	330,846.17(a)	94	1.29	11.5	12.5	51.06	4.69
1926	336,116.59(a)	95	1.26	11.4	12.7	50.65	4.55
1927	402,026.78(a)	114	1.51	13.5	15.2	58.16	5.26
1928	353,365.23	100	1.33	12.0	13.5	54.94	4.56
1929	319,732.48	90	1.23	11.2	12.3	54.45	4.28
1930	280,140.77	79	1.10	10.1	11.3	52.88	3.84
1931	260,243.29	74	1.07	10.0	11.1	52.24	3.79
1932	245,675.78	70	1.04	9.9	11.4	52.83	3.76
1933	226,453.80	64	.99	9.6	11.0	51.19	3.81
1934	211,404.05	60	.96	9.3	10.4	51.94	3.56
1935	163,423.83	46	.75	7.7	8.0	45.43	2.77
1936	175,353.09	50	.86	8.1	8.3	44.57	2.96
1937	228,047.70	65	1.17	10.8	12.3	50.36	3.82
1938	188,054.63	53	1.05	9.8	13.2	48.79	3.37
1939	135,376.57	38	.84	7.9	10.8	44.05	2.57
1940	123,824.65	35	.89	8.4	11.4	37.61	2.44
1941	116,192.06	33	.97	9.1	12.0	31.61	2.35
1942	114,360.68	32	.97	8.9	10.1	24.80	2.05

* Rail operations only
Total rail passengers
(a) Includes minor amounts for bus operations

COMPARISON OF UNIT COSTS



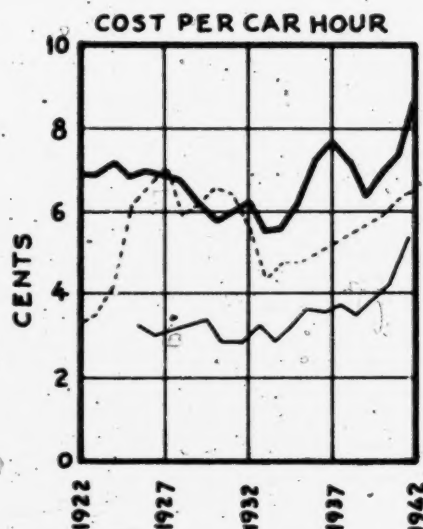
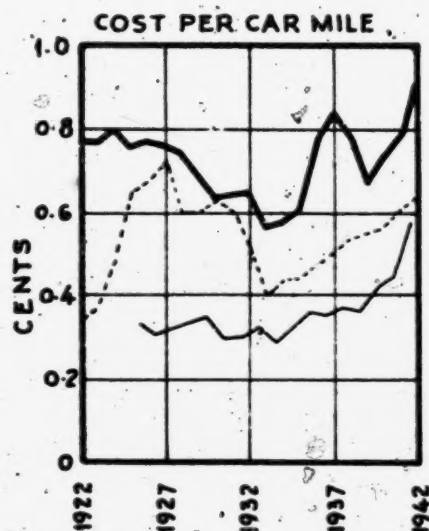
MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 33 - ELECTRIC EQUIPMENT OF CARS
(Includes Cable Equipment of Cable Cars)

Year:	Amount	Index (1920 = 100)	Cost per Car-Mile*	Cost per Car-Hour*	Cost per 100 Pas- sengers#	Per Cent of Group II	Total Operating Expense
1922	192,973.94	98	0.769¢	6.91¢	7.59¢	29.71%	2.81%
1923	194,918.62	99	0.768¢	6.89¢	7.49¢	30.41	2.85
1924	206,100.60	105	0.800¢	7.19¢	7.86¢	31.22	2.93
1925	196,985.83	100	0.763¢	6.84¢	7.45¢	30.40	2.79
1926	205,384.44	105	0.773¢	6.94¢	7.75¢	30.95	2.78
1927	202,057.15	103	0.758¢	6.78¢	7.66¢	29.23	2.64
1928	196,196.87	100	0.740¢	6.68¢	7.50¢	30.50	2.53
1929	176,074.33	90	0.676¢	6.19¢	6.78¢	29.98	2.36
1930	161,547.12	82	0.636¢	5.83¢	6.50¢	30.49	2.22
1931	156,001.96	80	0.641¢	5.97¢	6.66¢	31.32	2.27
1932	153,731.10	78	0.649¢	5.18¢	7.15¢	33.06	2.35
1933	129,316.71	66	0.566¢	5.50¢	6.29¢	30.94	2.18
1934	126,451.39	64	0.577¢	5.58¢	6.25¢	31.07	2.13
1935	133,465.26	68	0.608¢	6.28¢	6.55¢	37.10	2.26
1936	158,453.51	81	0.779¢	7.34¢	7.51¢	40.27	2.68
1937	162,889.05	83	0.835¢	7.74¢	8.76¢	35.97	2.73
1938	138,728.50	71	0.775¢	7.22¢	9.73¢	35.99	2.48
1939	107,831.09	55	0.669¢	6.33¢	8.61¢	35.09	2.04
1940	102,365.62	52	0.739¢	6.98¢	9.40¢	31.09	2.02
1941	95,062.50	48	0.791¢	7.44¢	9.78¢	25.86	1.93
1942	114,980.74	59	0.973¢	8.95¢	10.14¢	24.93	2.06

* Rail operations only.

Total rail passengers

COMPARISON OF UNIT COSTS



— MARKET ST. RY.

- - - S.F. MUNICIPAL RY.

..... LOS ANGELES RY. CO.

IV—Operating Expenses
Market Street Railway Company
Analysis of Operating Expenses

Group III—Power

1941, 1942, and 12 Months Ended May 1943

12 Months Ended May 31, 1943*				
Ac. No.	Account	1941	1942	Amount
Maintenance				
45-1	Superintendence of Power Plant Equip.	\$2,831.17	\$2,698.90	\$2,770.61
46	Power Plant Buildings	167.80	94.41	201.28
47-1	Power Plant Equipment	327.60	569.87	262.87
47-2	Cables	46,131.39	39,517.88	39,180.67
47-3	Fillmore Hill Expense	245.07		
47	Subtotal—Power Plant Equipment	46,704.06	40,087.75	39,443.54
48	Substation Equipment	4,627.56	4,906.06	5,135.88
	Total Maintenance	54,330.59	47,787.12	47,551.31
Operation				
45-2	Superintendence of Power Operations	4,564.19	4,230.42	4,495.50
52	Wages of Power Plant Employees	7,155.97	7,924.78	8,486.33
53	Fuel for Power	181,165.44	230,724.81	225,678.75
55	Lubricants for Power	14,277.20	24,930.62	26,031.23
56	Misc. Power Plant Supplies	733.15	571.89	572.18
57	Wages of Substation Employees	46,940.96	53,511.52	55,701.28
58	Substation Supplies	2,183.77	1,980.15	2,135.83
59	Power Purchased	585,175.66	570,498.63	579,503.78
	Total Operation	842,196.34	894,372.82	902,604.88
	Total Power Expenses	\$896,526.93	\$942,159.94	\$950,156.19
	Index	100	105	106
				400.0%

* May 1943 figures are tentative.

[fol. 398] The following tabulation shows the trend of charges to the Power group from 1922 to 1942, both in amount and as a percentage of total operating expenses:

Group III—Power—1922 to 1942

Year	Amount	Index 1928=100	Per Cent of Total Operating Expense
1922	\$1,453,603.15	105	21.19%
1923	1,346,159.04	98	19.70
1924	1,335,343.02	97	18.98
1925	1,331,060.39	97	18.87
1926	1,364,951.87	99	18.46
1927	1,360,576.55	99	17.81
1928	1,378,601.41	100	17.80
1929	1,355,688.19	98	18.15
1930	1,339,948.92	97	18.39
1931	1,287,732.17	93	18.76
1932	1,258,679.39	91	19.26
1933	1,199,861.36	87	20.20
1934	1,159,361.74	84	19.51
1935	1,126,994.51	82	19.09
1936	1,153,792.46	84	19.50
1937	1,133,709.08	82	18.98
1938	1,055,098.42	77	18.90
1939	908,170.68	66	17.22
1940	886,015.73	64	17.49
1941	896,526.93	65	18.16
1942	942,159.94	68	16.89

The power group in 1942 amounted to 17 per cent of total operating expense, excluding depreciation and taxes.

Table 4-13 shows the trend of power expenses for Market Street's rail operations, including trolley coaches. This expense in 1942 was just half that of the peak years 1926-1928, and represented 12.3 per cent of system total operating expense. Power expense for rail operations per car-mile and per car-hour is lower in Market Street Railway than in the Municipal Railway but considerably higher than in Los Angeles Railway. Substantially all of Municipal Railway's charges are for purchased power. The hilly

character of San Francisco undoubtedly contributes to the higher unit costs here. Market Street is the only one of the three companies operating cable cars.

The trends of unit power expense for rail operations are shown in the following tabulation. The Market Street figures include its trolley coach operation which began in 1935.

(Here follows 1 photolithograph, side folio 399)

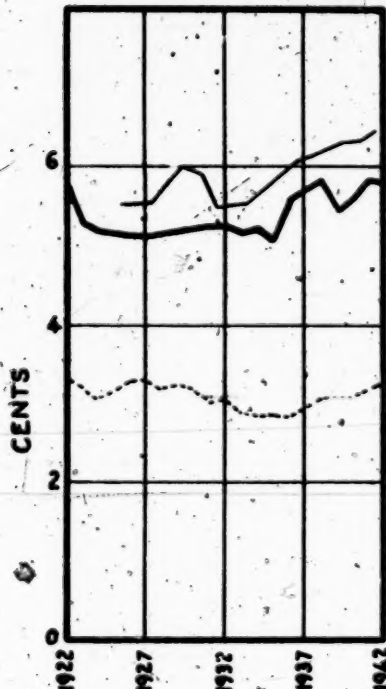
MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
GROUP III - POWER
(excluding Depreciation)
RAIL OPERATIONS*

: Year :	Amount	: Index : (1928=100)	: Cost : per :Car-Mile :	: Cost : per :Car-Hour :	: Per Cent : : of Total : : Operating : : Expense :
1922	\$1,453,603.15	106	5.79¢	52.0¢	21.2%
1923	1,346,159.04	99	5.30	47.6	19.7
1924	1,335,343.02	98	5.18	46.6	19.0
1925	1,331,060.39	97	5.16	46.2	18.9
1926	1,364,951.87	100	5.14	46.1	18.5
1927	1,360,576.55	100	5.10	45.7	17.8
1928	1,365,479.34	100	5.15	46.5	17.6
1929	1,340,906.09	98	5.15	47.1	18.0
1930	1,324,559.88	97	5.21	47.8	18.2
1931	1,275,371.30	93	5.24	48.8	18.6
1932	1,240,854.01	91	5.24	49.9	19.0
1933	1,181,643.57	87	5.17	50.2	19.9
1934	1,141,237.40	84	5.21	50.3	19.2
1935	1,110,567.64	81	5.06	52.3	18.8
1936	1,137,671.05	83	5.59	52.7	19.2
1937	1,115,278.62	82	5.72	53.0	18.7
1938	1,037,113.94	76	5.80	54.0	18.6
1939	880,081.49	64	5.46	51.6	16.7
1940	773,618.28	57	5.59	52.8	15.3
1941	701,165.34	51	5.84	54.9	14.2
1942	686,635.30	50	5.81	53.4	12.3

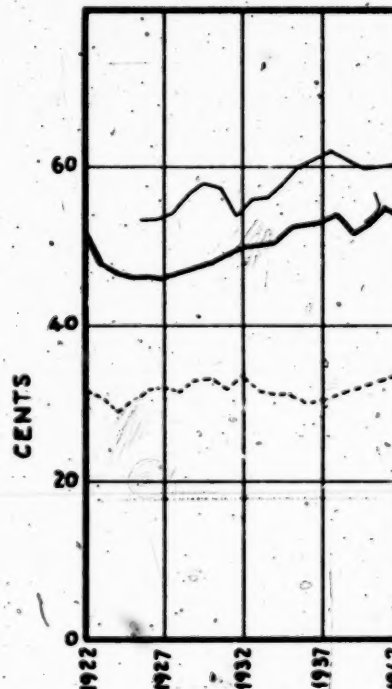
* Includes trolley coach line.

COMPARISON OF UNIT COSTS

COST PER CAR MILE



COST PER CAR HOUR



MARKET ST. RY.

S.F. MUNICIPAL RY.

LOS ANGELES RY. CO.

[fol. 400]

IV—Operating Expenses

Comparison of Power Expense—Rail Operations

Expense per Car-Mile

Expense per Car-Hour

Year	Market Street Railway	Municipal Railway*	Los Angeles Railway	Market Street Railway	Municipal Railway*	Los Angeles Railway
1932	5.24¢	5.47¢	3.03¢	49.9¢	53.8¢	33.4¢
1933	5.17	5.52	2.87	50.2	55.8	31.7
1934	5.21	5.54	2.82	50.3	56.2	31.0
1935	5.06	5.70	2.83	52.3	57.7	31.0
1936	5.59	5.89	2.81	52.7	60.0	29.8
1937	5.72	6.03	2.92	53.0	61.0	30.2
1938	5.80	6.12	3.04	54.0	61.6	31.2
1939	5.46	6.20	3.09	51.6	60.7	32.0
1940	5.59	6.30	3.09	52.8	59.8	32.4
1941	5.84	6.32	3.19	54.9	59.9	33.1
1942	5.81	6.45	3.29	53.4	60.2	33.6

* Fiscal year ended June 30.

Account 59—Power Purchased

The company purchases all of its electric power requirements from Pacific Gas and Electric Company. The following tabulation shows the trend of cost, kilowatt-hours purchased, and average cost per kilowatt-hour from 1928 to 1942:

Electric Power Purchased

Year	Amount	Index	Thousands of Kilowatt- Hours Purchased	Average Cost per Kilowatt- Hour (Mills)
1928	\$1,237,044.89	100	148,985	8.30
1929	1,211,449.62	98	145,682	8.32
1930	1,184,731.55	96	142,486	8.31
1931	1,138,400.48	92	136,754	8.32
1932	1,107,066.43	89	132,883	8.33
1933	1,060,535.32	86	127,178	8.34
1934	1,020,048.12	82	122,210	8.35
1935	991,015.22	80	118,552	8.36
1936	1,017,476.01	82	122,011	8.34
1937	990,999.26	80	118,282	8.38
1938	898,557.05	73	106,925	8.40
1939	756,636.91	61	95,498	7.92
1940	654,149.02	53	84,361	7.75
1941	585,175.66	47	73,761	7.93
1942	570,498.63	46	72,267	7.89

[fol. 401] D.—Conducting Transportation

This group of expenses covers the cost of labor and other expenses incurred in conducting transportation, including the operation of passenger cars, carhouses, stations,

communication system, and signal apparatus, and the superintendence of such operations. This expense amounted to \$3,100,000 in 1942, or 55.6 per cent of total operating expenses before taxes and depreciation. Table 4-14 shows the charges to Group IV, by accounts, for the years 1941 and 1942 and the 12 months ended May 31, 1943. Account 64 "Wages of Platform Men" is by far the largest account, representing 84 per cent of this group and 47 per cent of total operating expense, exclusive of taxes and depreciation, in 1942. The charges to this group for the year ended May 31, 1943, were 9 per cent higher than for 1942 and 22 per cent higher than 1941, in which year the charges were a minimum.

The following tabulation shows the trend of this group of expenses for the company as a whole from 1922 to 1942, together with the cost per 100 passengers and the relation to total operating expense:

Conducting Transportation Expense
1922-1942

Year	Amount	Index (1928 = 100)	Cost per 100 Passengers	Per Cent of Total Operating Expense
1922	\$3,394,206.35	86	\$1.34	49.48
1923	3,500,178.70	89	1.34	51.22
1924	3,582,102.94	91	1.37	50.91
1925	3,601,356.99	91	1.36	51.06
1926	3,812,843.82	97	1.44	51.57
1927	3,902,674.31	99	1.48	51.08
1928	3,940,251.54	100	1.51	50.86
1929	3,843,480.07	98	1.47	51.46
1930	3,780,918.12	96	1.51	51.89
1931	3,625,620.09	92	1.54	52.82
1932	3,383,061.69	86	1.56	51.77
1933	2,923,756.48	74	1.41	49.22
1934	2,837,463.59	72	1.38	47.75
1935	3,082,265.97	78	1.49	52.22
1936	3,054,776.82	78	1.43	51.62
1937	3,058,383.47	78	1.63	51.21
1938	2,893,733.99	73	2.00	51.83
1939	2,909,931.95	74	2.25	55.18
1940	2,838,712.27	72	2.27	56.04
1941	2,768,967.79	70	2.19	56.09
1942	3,101,301.03	79	1.99	55.59

Table 4-14.
IV—Operating Expenses
Market Street Railway Company
Analysis of Operating Expenses
Group IV—Conducting Transportation

Ac. No.	Account	1941	12 Months Ended May 31, 1943*		
			1942	Amount	%
63	Superintendence of Transportation	\$184,116.57	\$196,083.37	\$215,115.30	6.3
64	Wages of Platform Men*	2,312,673.34	2,610,918.74	2,836,837.00	83.9
66	Misc. Car-Service Employees	11,748.80	9,357.57	10,055.03	0.3
67-1	Misc. Car-Service Expense	24,284.40	24,361.31	28,457.62	0.9
67-2	Secret Service	12,676.21	10,715.92	10,822.41	0.3
67	Subtotal—Ac. 67	36,960.61	35,077.23	39,280.03	1.2
68	Wages of Station Employees	617.91	200.59	288.36	0.1
69	Station Expense	199,724.22	224,963.52	253,111.12	7.5
70	Wages of Carhouse Employees	5,065.22	5,680.47	5,928.55	0.2
71	Carhouse Expense	1,729.37	1,920.40	2,013.08	0.1
72	Operation of Signal Apparatus	8,320.44	8,275.45	8,702.36	0.2
73	Operation of Telephone Lines	8,011.31	8,823.69	9,221.21	0.3
78	Other Transportation Expense				
	Total Conducting Transportation	\$2,768,967.79	\$3,101,301.03	\$3,380,552.04	100.0
	Index	100	112	122	

* Includes coach operators.

* May, 1943 figures are tentative.

[fol. 403] This group of expenses decreased 30 per cent from the 1928 peak to 1941 and then increased sharply in 1942. The cost per 100 passengers carried reached a maximum of \$2.27 in 1940 and decreased to \$1.99 in 1942. The decrease reflects the increased use of buses as well as increasing patronage in 1942, since the cost per 100 passengers for bus operations has been considerably lower than for rail operations since 1938.*

Tables 4-15 and 4-16 show the trends of Conducting Transportation expense for rail and bus operation, respectively, together with costs per car-mile, per car-hour, and per 100 passengers. The general decline of rail operations since 1928 and the rapid expansion of bus operations beginning in 1939 are reflected in the charges. In 1942, bus operations accounted for roughly 22 per cent of the charges to this group, and for about 27 per cent of the total passengers carried.

At the bottom of Table 4-15 are three graphs comparing the trends of cost per car-mile, per car-hour, and per 100 passengers with the Municipal and Los Angeles railways. In the early years Market Street's costs per car-mile and per car-hour approximated those of Los Angeles Railway, the Municipal Railway's costs being considerably higher. About 1935 Market Street's unit costs began to rise above those of Los Angeles Railway and have continued to increase until they now approach the Municipal Railway's costs. The graph of cost per 100 passengers carried reflects the effect of the increase in Market Street's fares upon its patronage. The Market Street curve began a very sharp rise in 1937, the year the 2-cent transfer charge was introduced, which continued through 1939, and at a lesser rate through 1940. On the other hand the Municipal Railway's cost per 100 passengers has declined almost steadily since 1935 and has been lower than Market Street's since 1938 despite higher wages for platform men.

Table 4-16 indicates the rapid increase in bus operation beginning in 1939, charges to this group having increased eighteenfold from 1938 to 1942. Although the cost per bus-hour has increased steadily since 1934, the cost per 100 passengers reached a maximum in 1938 and has been decreasing since 1940. At the bottom of Table 4-16 is a

* See Tables 4-15 and 4-16.

five-year comparison of costs per bus-mile, per bus-hour, and per 100 bus passengers in the Market Street and Municipal railways. It should be noted that the Municipal figures are on a fiscal-year basis.

Account 63—Superintendence of Transportation

This account is chargeable with the salaries and expenses, including office expenses, of officers and assistants when directly in charge of transportation. One-third of the salary of the vice president in charge of operations and the entire salary of the superintendent of transportation are charged to this account.

(Here follows 1 photolithograph side folio 404)

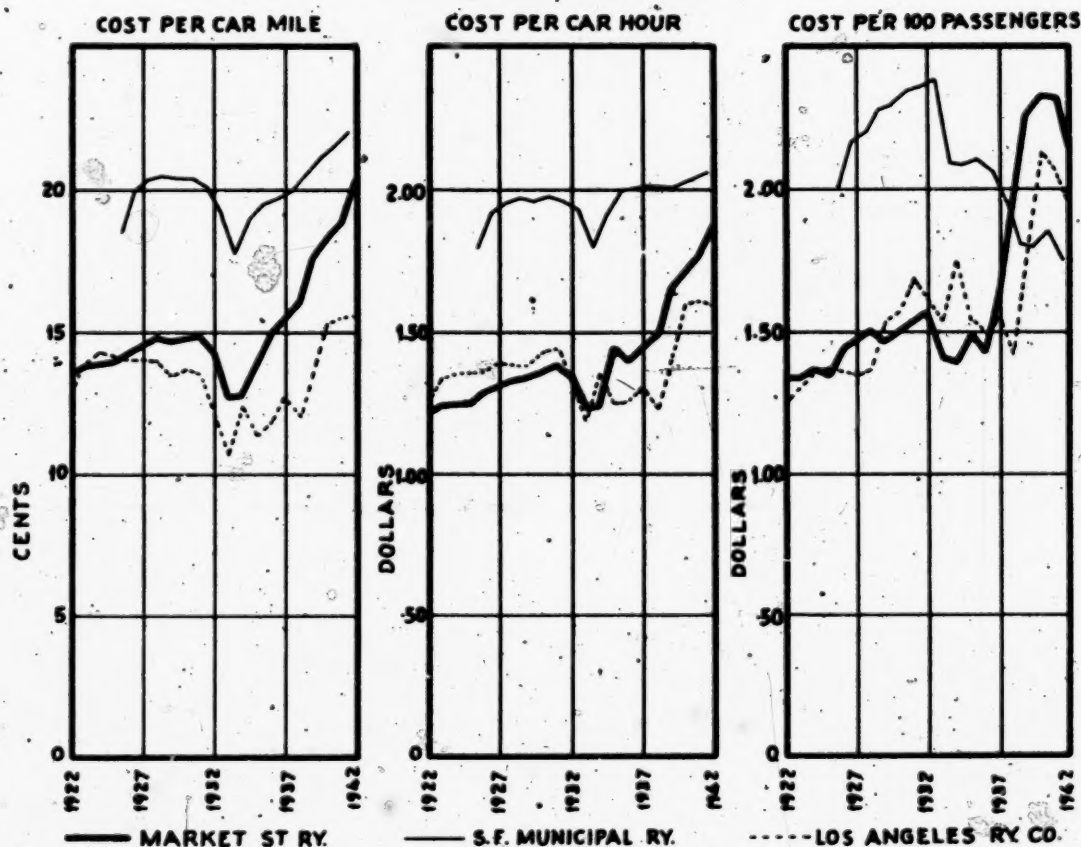
**MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
GROUP IV - CONDUCTING TRANSPORTATION**

RAIL OPERATIONS

Year	Amount	Index: (1928=100)	Cost per Car-Mile	Cost per Car-Hour	Cost per 100 Pas- sengers	Per Cent of Group IV	Per Cent of Total Operating Expense
1922	\$3,394,206.35	87	13.54	\$1.22	\$1.34	100.00%	49.48%
1923	3,500,178.70	89	13.8	1.24	1.34	100.00	51.22
1924	3,582,102.94	91	13.9	1.25	1.37	100.00	50.91
1925	3,601,356.99(a)	92	14.0	1.25	1.36	100.00	51.06
1926	3,812,843.82(a)	97	14.3	1.29	1.44	100.00	51.57
1927	3,902,874.31(a)	100	14.6	1.31	1.48	100.00	51.08
1928	3,921,889.69	100	14.8	1.33	1.50	99.53	50.63
1929	3,824,255.88	98	14.7	1.34	1.47	99.50	51.20
1930	3,762,846.36	96	14.8	1.36	1.51	99.52	51.64
1931	3,604,741.87	92	14.8	1.38	1.54	99.42	52.52
1932	3,352,035.86	85	14.2	1.35	1.56	99.08	51.29
1933	2,895,871.39	74	12.7	1.23	1.41	99.05	48.75
1934	2,809,843.91	72	12.8	1.24	1.39	99.03	47.29
1935	3,050,951.28	78	13.9	1.44	1.49	98.98	51.69
1936	3,024,944.61	77	14.9	1.40	1.43	99.02	51.11
1937	3,024,963.43	77	15.5	1.44	1.63	98.91	50.65
1938	2,855,491.59	73	16.0	1.49	2.00	98.68	51.15
1939	2,836,975.07	72	17.6	1.66	2.27	97.49	53.80
1940	2,527,124.34	64	18.3	1.72	2.33	89.02	49.89
1941	2,255,788.69	58	18.8	1.77	2.32	81.47	45.70
1942	2,424,565.57	62	20.5	1.89	2.14	78.18	43.46

(a) Includes minor bus operations
 * Rail operations only
 # Total passengers - rail

COMPARISON OF UNIT COSTS



[fol. 405]

Table 4-16

IV—Operating Expenses

Market Street Railway Company

Analysis of Operating Expenses

Group IV—Conducting Transportation

Bus Operations

Year	Amount	Index (1928= 100)	Cost per Bus-Mile	Cost per Bus-Hour	Cost per 100 Bus Pas- sengers*	Per Cent of Group IV	Per Cent of Total Operating Expense
1928	\$18,361.85	100	6.90¢	\$0.659	\$0.93	0.47%	0.24%
1929	19,224.19	105	6.81	0.659	0.93	0.50	0.26
1930	18,071.76	98	6.84	0.618	0.90	0.48	0.25
1931	20,878.22	114	7.30	0.715	1.07	0.58	0.30
1932	31,025.83	169	7.42	0.718	1.24	0.92	0.47
1933	27,885.09	152	6.73	0.651	1.08	0.95	0.47
1934	27,619.68	150	6.80	0.649	1.04	0.97	0.46
1935	31,314.69	171	8.21	0.788	1.28	1.02	0.53
1936	29,832.21	162	8.34	0.828	1.06	0.98	0.50
1937	33,420.04	182	8.84	0.887	1.81	1.09	0.56
1938	38,242.40	208	8.83	0.916	2.09	1.32	0.69
1939	72,956.88	397	10.56	1.025	1.66	2.51	1.38
1940	311,587.93	1,697	9.74	1.044	1.92	10.98	6.15
1941	513,179.10	2,795	10.60	1.080	1.77	18.53	10.40
1942	676,735.46	3,686	12.24	1.172	1.60	21.82	12.13

* Total bus passengers.

Comparison of Unit Costs

Year	Cost per Bus Mile		Cost per Bus-Hour		Cost per 100 Pass.	
	Market Street Railway	Municipal*	Market Street Railway	Municipal*	Market Street Railway	Municipal*
1938	8.73¢	11.3¢	\$.92	\$1.07	\$2.09	\$1.95
1939	10.56	11.3	1.02	1.09	1.66	1.75
1940	9.74	10.1	1.04	1.03	1.92	1.77
1941	10.60	9.6	1.08	1.01	1.77	1.63
1942	12.24	11.2	1.17	1.20	1.60	1.96

* Fiscal year ended June 30.

[fol. 406] Table 4-17 shows the trend of this account from 1922 to 1942 for rail and bus operations combined. The charges reached a maximum in the period 1928-1931, and for the past four years have run 70-75 per cent of that level.

Account 64—Wages of Platform Men

This account includes the wages of street car conductors and motormen and bus operators. It is the largest single operating expense account, amounting to \$2,611,000 in 1942 and representing almost half the total operating expenses exclusive of taxes and depreciation.

Tables 4-18, 4-19, and 4-20 show the trends of Market Street Railway's charges to this account for the system

and for rail and bus operations respectively. Referring to Table 4-19, for rail operations, the graphs at the bottom of the table show a comparison of unit costs with the Municipal and Los Angeles railways. The graphs are similar to those on Table 4-15 since even with the large increase in bus operations Market Street's charges to Account 64 for rail operations were two-thirds of the Conducting Transportation expense for rail and bus operations combined in 1942. Table 4-20 shows the trends of total and unit expense in this account for bus operations over the period 1928 to 1942. At the bottom of the table is a comparison of Market Street's unit costs with those of the Municipal Railway's bus operation.

The trend of car and bus operators' wage rates since 1935 is indicated by the following tabulation which gives the maximum base hourly rates for the various classes of operation, as of January 1 of each year:

As of January 1	Electric Car Conductors and Motormen (2-Man Operation)*	Electric Car Operators (1-Man Operation)	Motor Coach and Trolley Coach Operators
1935	50¢		55¢
1936	62½¢	67½¢	67½¢
1937	62½¢	67½¢	67½¢
1938	67½¢	75	75
1939	70	77½	77½
1940	70		80
1941	72½¢		82½
1942	75		85
1943	83		90

* Applies also to cable car gripmen and conductors.

Table 4-17

IV—Operating Expenses
 Market Street Railway Company
 Analysis of Operating Expenses
 Account 63—Superintendence of Transportation
 Rail and Bus Operations

	Amount	Index (1928= 100)	Cost per Car- Mile*	Cost per Car- Hour*	Cost per 100 Pas- sengers#	Per Cent of	
						Group IV	Total Operating Expense
2	\$184,860.45	70	0.74¢	6.62¢	7.27¢	5.45%	2.69%
3	202,797.56	77	0.80	7.16	7.79	5.79	2.97
4	211,576.29	80	0.82	7.38	8.06	5.91	3.01
5	215,125.21	81	0.83	7.47	8.13	5.97	3.05
6	230,057.30	87	0.87	7.77	8.68	6.03	3.11
7	250,620.04	95	0.94	8.42	9.51	6.42	3.28
8	264,774.57	100	0.99	8.92	10.1	6.72	3.42
9	264,191.73	100	1.00	9.19	10.1	6.87	3.54
10	270,619.69	102	1.05	9.67	10.8	7.16	3.71
11	269,870.68	102	1.10	10.21	11.4	7.44	3.93
12	237,852.87	90	0.99	9.40	10.9	7.03	3.64
13	205,941.59	78	0.89	8.60	9.9	7.04	3.47
14	215,500.97	81	0.97	9.33	10.5	7.59	3.63
15	228,489.33	86	1.02	10.56	11.0	7.41	3.87
16	252,239.12	95	1.22	11.49	11.8	8.26	4.26
17	241,262.81	91	1.21	11.26	12.9	7.89	4.04
18	214,251.34	81	1.17	10.91	14.8	7.40	3.84
19	198,075.21	75	1.18	11.16	15.3	6.81	3.76
20	198,010.73	75	1.16	11.23	15.9	6.98	3.91
21	184,116.57	70	1.09	10.50	14.6	6.65	3.73
22	196,083.37	74	1.13	10.53	12.6	6.32	3.51

* Rail and bus combined.

Total passengers—rail and bus.

[fol. 408]

Table 4-18

IV—Operating Expenses

Market Street Railway Company

Analysis of Operating Expenses

Account 64—Wages of Platform Men

Rail and Bus Operations Combined

Year	Amount	Index (1928= 100)	Cost per Car Mile	Cost per Car- Hour	Cost per 100 Pas- sengers#	Per Cent of	
						Group IV	Total Operating Expense
1922	\$2,856,416.17	87	11.4	\$1.02	\$1.12	84.16%	41.64
1923	2,938,364.46	90	11.6	1.04	1.13	83.95	43.00
1924	3,018,246.50	92	11.7	1.05	1.15	84.26	42.90
1925	3,036,591.10	93	11.8	1.05	1.15	84.32	43.05
1926	3,210,973.49	98	12.1	1.08	1.21	84.21	43.43
1927	3,263,682.73	100	12.2	1.10	1.24	83.63	42.71
1928	3,278,480.48	100	12.2	1.10	1.25	83.20	42.32
1929	3,185,905.53	97	12.1	1.11	1.22	82.89	42.65
1930	3,119,699.57	95	12.2	1.11	1.24	82.51	42.81
1931	2,972,075.64	91	12.1	1.12	1.26	81.97	43.30
1932	2,788,472.29	85	11.6	1.10	1.28	82.42	42.67
1933	2,396,671.37	73	10.3	1.00	1.15	81.97	40.35
1934	2,287,618.37	70	10.3	.99	1.12	80.62	38.50
1935	2,532,677.36	77	11.3	1.17	1.22	82.17	42.91
1936	2,476,806.79	76	12.0	1.13	1.16	81.08	41.85
1937	2,474,605.58	75	12.4	1.15	1.32	80.94	41.44
1938	2,363,750.94	72	12.9	1.20	1.64	81.69	42.34
1939	2,423,843.79	74	14.4	1.37	1.87	83.30	45.97
1940	2,348,333.34	72	13.8	1.33	1.88	82.73	46.36
1941	2,312,673.34	71	13.7	1.32	1.83	83.52	46.85
1942	2,610,918.74	80	15.1	1.40	1.68	84.19	46.80

Total passengers.

(Here follows 1 photolithograph, side folio 409)

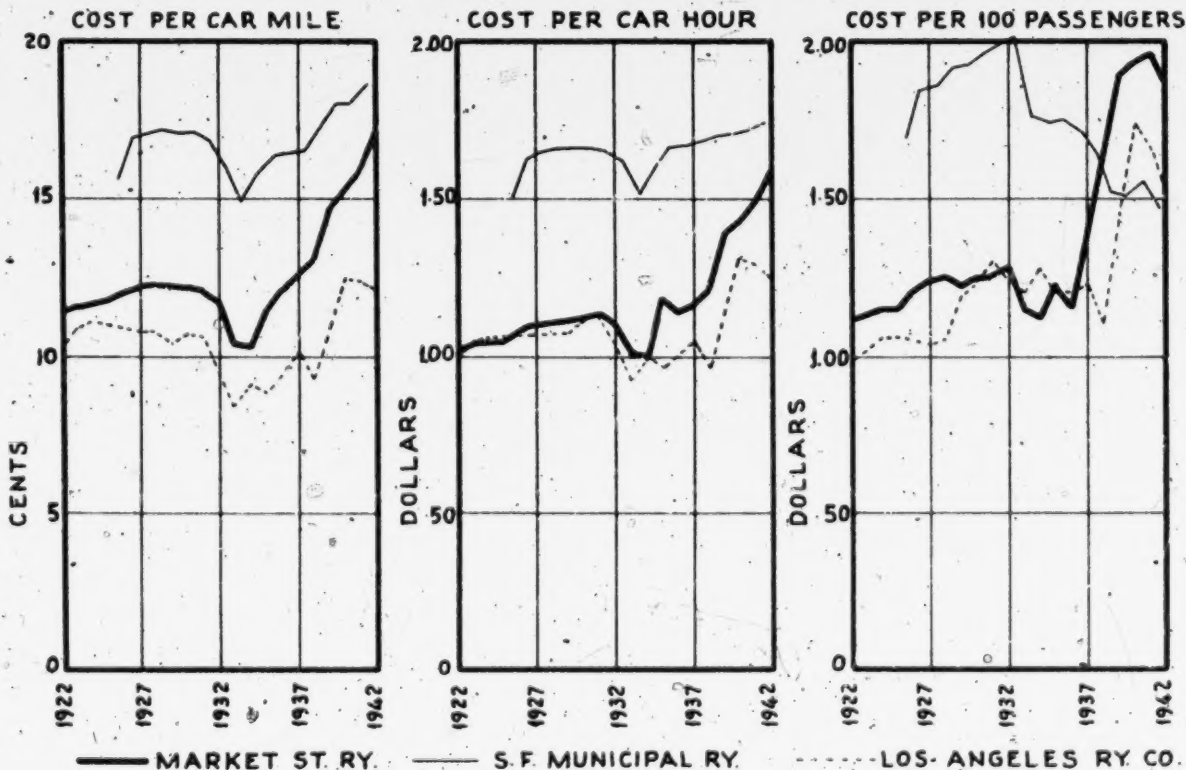
MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
ACCOUNT 64 - WAGES OF PLATFORM MEN

RAIL OPERATIONS ONLY

: Year :	: Index :	: Cost :	: Cost :	: Cost :	: Per Cent of :	: Total :	
: (1928=	: per	: per	: per	: Pas-	: Group	: Operating:	
: 100)	: Car-Mile	: Car-Hour	: sengers#	: IV	: Expenses :		
1922	\$2,856,416.17	88	11.44	\$1.02	\$1.12	84.16	41.64
1923	2,938,364.46	90	11.6	1.04	1.13	83.95	43.00
1924	3,018,246.50	93	11.7	1.05	1.15	84.26	42.90
1925	3,036,591.10	93	11.8	1.05	1.15	84.32	43.05
1926	3,210,973.49	98	12.1	1.08	1.21	84.21	43.43
1927	3,263,682.73	100	12.2	1.10	1.24	83.63	42.71
1928	3,261,949.38	100	12.3	1.11	1.25	82.79	42.11
1929	3,168,655.53	97	12.2	1.11	1.22	82.44	42.42
1930	3,101,990.49	95	12.2	1.12	1.25	82.04	42.57
1931	2,954,415.35	91	12.1	1.13	1.26	81.49	43.04
1932	2,762,709.88	85	11.7	1.11	1.28	81.66	42.27
1933	2,373,108.44	73	10.4	1.01	1.15	81.16	39.95
1934	2,264,367.07	69	10.3	1.00	1.12	79.80	38.11
1935	2,506,419.32	77	11.4	1.18	1.23	81.32	42.46
1936	2,452,555.18	75	12.1	1.14	1.16	80.29	41.44
1937	2,446,960.35	75	12.5	1.16	1.32	80.01	40.97
1938	2,331,193.07	71	13.0	1.21	1.63	80.56	41.76
1939	2,366,064.33	73	14.7	1.39	1.89	81.31	44.87
1940	2,100,671.00	64	15.2	1.43	1.93	74.00	41.47
1941	1,903,507.23	58	15.8	1.49	1.96	68.74	38.56
1942	2,070,752.02	63	17.5	1.61	1.83	66.77	37.12

Total rail passengers

COMPARISON OF UNIT COSTS



[fol. 410]

Table 4-20

IV—Operating Expenses
Market Street Railway Company
Analysis of Operating Expenses
Account 64—Wages of Platform Men

Bus Operations

Year	Amount	Index (1928= 100)	Cost per Bus- Mile	Cost per Bus- Hour	Cost per 100 Pas- sengers*	Per Cent of	
						Group IV	Total Operating Expenses
1928	\$16,531.10	100	6.21	59.3¢		0.42%	0.21%
1929	17,250.00	104	6.10	59.2	0.84¢	0.45	0.23
1930	17,709.08	107	6.70	60.6	0.88	0.47	0.24
1931	17,660.29	107	6.18	60.5	0.91	0.49	0.26
1932	25,762.41	156	6.16	59.6	1.03	0.76	0.39
1933	23,562.93	143	5.69	55.0	0.92	0.81	0.40
1934	23,251.30	141	5.73	54.6	0.88	0.82	0.39
1935	26,258.04	159	6.89	66.1	1.07	0.85	0.44
1936	24,251.61	147	6.78	67.3	0.86	0.80	0.41
1937	27,645.23	167	7.31	73.4	1.49	0.90	0.46
1938	32,557.87	197	7.43	78.0	1.78	1.13	0.58
1939	57,779.46	350	8.36	81.2	1.31	1.99	1.10
1940	247,662.34	1,498	7.75	83.0	1.53	8.72	4.89
1941	409,166.11	2,475	8.45	86.1	1.41	14.78	8.29
1942	540,166.72	3,268	9.77	93.6	1.28	17.42	9.68

* Total bus passengers.

Comparison of Unit Costs

Year	Cost per Bus-Mile		Cost per Bus-Hour		Cost per 100 Passgrs.	
	Market Street Railway	Municipal*	Market Street Railway	Municipal*	Market Street Railway	Municipal*
1938	7.43¢	9.08¢	78.0¢	85.9¢	\$1.78	\$1.57
1939	8.36	9.12	81.2	87.6	1.31	1.41
1940	7.75	8.48	83.0	86.2	1.53	1.49
1941	8.45	8.35	86.1	87.5	1.41	1.42
1942	9.77	8.44	93.6	91.0	1.28	1.48

* Fiscal Year ended June 30th.

[fol. 411] Market Street's base pay rates of operators as of June, 1943, for varying lengths of service are compared with the corresponding rates of the San Francisco Municipal Railway and Los Angeles Railway in the following tabulation:

Comparison of Operator Wage Rates

As of June, 1943

Base Pay—Cents per Hour

Period of Service	Conductors and Motormen (2-Man-Car Operation)			Bus Operators		
	Market Street	Municipal	L.A. Railway	Market Street	Municipal	L.A. Railway
First 6 Months	73	80	70	80	87½	80*
Second 6 Months	75½	82½		82½		
Third 6 Months	78	85	76	85		86*
Fourth 6 Months	80½	87½		87½		
Fifth 6 Months	83		80	90		90*
Thereafter						

* Applies also to 1-man operation of street cars.

Account 70—Wages of Carhouse Employees

To this account are chargeable the wages of carhouse foremen; car, motor, and brake inspectors; car placers, car shifters, car cleaners; and other carhouse employees not engaged in making repairs. The trend of Account 70 for the system as a whole is shown in Table 4-21.

The charges to this account were highest in the years 1928-1930, following which they declined to a minimum in 1941 with a subsequent increase in 1942. The account represents about 7 per cent of the group and 4 per cent of total operating expenses.

E—Traffic

Traffic expenses amounted to only \$1,750 in 1942 or 0.03 per cent of total operating expenses. The 1942 charges were as follows:

Account 79—Superintendence & Solicitation	\$ 387.50
Account 80—Advertising	1,309.32
Account 82—Miscellaneous traffic expenses	56.30
Total	\$1,753.12

[fol. 412]

Table 4-21

IV—Operating Expenses

Market Street Railway Company

Analysis of Operating Expenses

Account 70—Wages of Carhouse Employees

Rail and Bus Operations Combined

Year	Amount	Index (1928= 100)	Cost per Car- Mile*	Cost per Car- Hour*	Cost per 100 Pas- sengers#	Per Cent of	
						Group IV	Total Operating Expenses
1922	\$251,073.34	89	1.00¢	8.99¢	9.9¢	7.40%	3.66%
1923	251,212.05	89	0.99	8.87	9.7	7.18	3.68
1924	250,200.96	88	0.97	8.72	9.5	6.99	3.56
1925	240,619.10	85	0.93	8.35	9.1	6.68	3.41
1926	256,032.50	90	0.96	8.65	9.7	6.71	3.46
1927	271,318.34	96	1.02	9.11	10.3	6.95	3.55
1928	283,493.17	100	1.06	9.55	10.8	7.19	3.66
1929	284,734.31	100	1.08	9.90	10.9	7.41	3.81
1930	284,821.17	100	1.11	10.20	11.4	7.53	3.91
1931	278,578.48	98	1.13	10.50	11.8	7.68	4.06
1932	260,449.02	92	1.08	10.30	12.0	7.70	3.99
1933	229,157.35	81	0.99	9.60	11.0	7.84	3.86
1934	224,860.50	79	1.01	9.70	11.0	7.92	3.78
1935	220,313.33	78	0.99	10.20	10.6	7.15	3.73
1936	222,857.92	79	1.08	10.10	10.4	7.30	3.77
1937	236,626.67	83	1.19	11.00	12.6	7.74	3.96
1938	218,858.64	77	1.19	11.10	15.2	7.56	3.92
1939	203,212.26	72	1.21	11.40	15.7	6.98	3.35
1940	204,489.15	72	1.20	11.60	16.4	7.20	4.04
1941	199,724.22	70	1.19	11.40	15.8	7.21	4.05
1942	224,963.52	79	1.30	12.10	14.4	7.26	4.03

* Rail and bus operations.

Total passengers—rail and bus.

[fol. 413] The highest charges to this group in recent years occurred in 1939. The total of \$67,050 for that year included \$50,410 for advertising.

F—General and Miscellaneous

Group VI, General and Miscellaneous expenses, includes general office salaries and expenses, law expenses, employees' welfare expenses such as medical care and pensions, insurance, injuries and damages, expense in connection with valuations, and other general expenses. Table 4-22 shows the general and miscellaneous expenses by accounts for 1941, 1942, and the 12 months ended May 31, 1943. The group represented 15 per cent of total operating expenses in 1942.

Table 4-23 shows the trend of general and miscellaneous expenses over the period 1922-1942, together with unit costs, per car-mile, per car-hour, and per 100 passengers, and the

group as a percentage of total operating expense, and total operating revenue. The charges reached a peak of \$1,072,000 in 1929 and declined to a minimum of \$656,000 in 1941. Most of the subsequent increase in 1942 was in Account 92—Injuries and Damages.

Account 83—Salaries and Expenses of General Officers

Salaries and expenses of the following officers are charged to this account: President, Secretary, Treasurer, General Auditor, Purchasing Agent.

For the past five years charges to this account have been practically constant at about \$60,000 per year.

Account 84—Salaries and Expenses of General Office Clerks

This account is charged with the salaries and expenses of the general office forces of the president, secretary, treasurer, and vice president, and the accounting department staff. Charges to this account have decreased from \$75,000 in 1938 to \$60,000 in 1941. The 1942 charges were \$62,000.

Account 85—General Office Supplies and Expenses

The total charges to this account amounted to \$38,240 in 1942. The largest item of expense is rental of the general office space in the Holbrook Building, which amounted to \$2,628 out of total charges of \$3,132 in April, 1943.

Table 4-22

IV—Operating Expenses
Market Street Railway Company
Analysis Operating Expenses
Group VI—General and Miscellaneous

Ac. No.	Account	12 Months Ended May 31, 1943*		
		1941	1942	Amount %
83	Salaries & Exp. of General Officers.....	\$60,180.90	\$60,800.20	\$63,073.30 6.6
84	Sal. & Exp. of Gen. Office Clerks.....	60,348.89	62,045.91	68,204.11 7.1
85	Gen. Off. Supplies & Expenses.....	41,592.36	38,240.06	38,417.68 4.0
86	Low Expense.....	50,800.63	45,478.00	43,278.00 4.5
87	Relief Dept. Expense.....	10,368.88	5,935.83	9,171.39 1.0
88	Pensions and Gratuities.....	31,476.34	29,103.46	27,459.46 2.9
89	Misc. General Expense.....	32,519.56	59,044.05	125,753.86 13.2
90	Valuation Expense.....	2,411.35	2,456.25	2,518.75 0.3
92	Injuries and Damages.....	260,500.00	407,500.00	445,000.00 46.6
93	Insurance.....	16,103.66	20,387.96	23,549.07 2.5
94	Stationery and Printing.....	22,537.72	30,963.36	31,957.97 3.3
95	Stores Expense.....	22,610.71	28,978.72	30,272.90 3.2
96	Garage Expense.....	26,457.23	29,794.92	30,951.18 3.2
97	Rent of Tracks and Facilities.....	18,190.59	16,756.46	15,774.44 1.6
	Total General & Miscellaneous.....	\$656,098.82	\$837,505.18	\$955,382.14 100.0
	Index.....	100	128	146

* May, 1943, figures are tentative.

(Here follows 1 photolithograph, side folio 415)

MARKET STREET RAILWAY COMPANY
ANALYSIS OF OPERATING EXPENSES
GROUP VI - GENERAL AND MISCELLANEOUS

Table 4-23

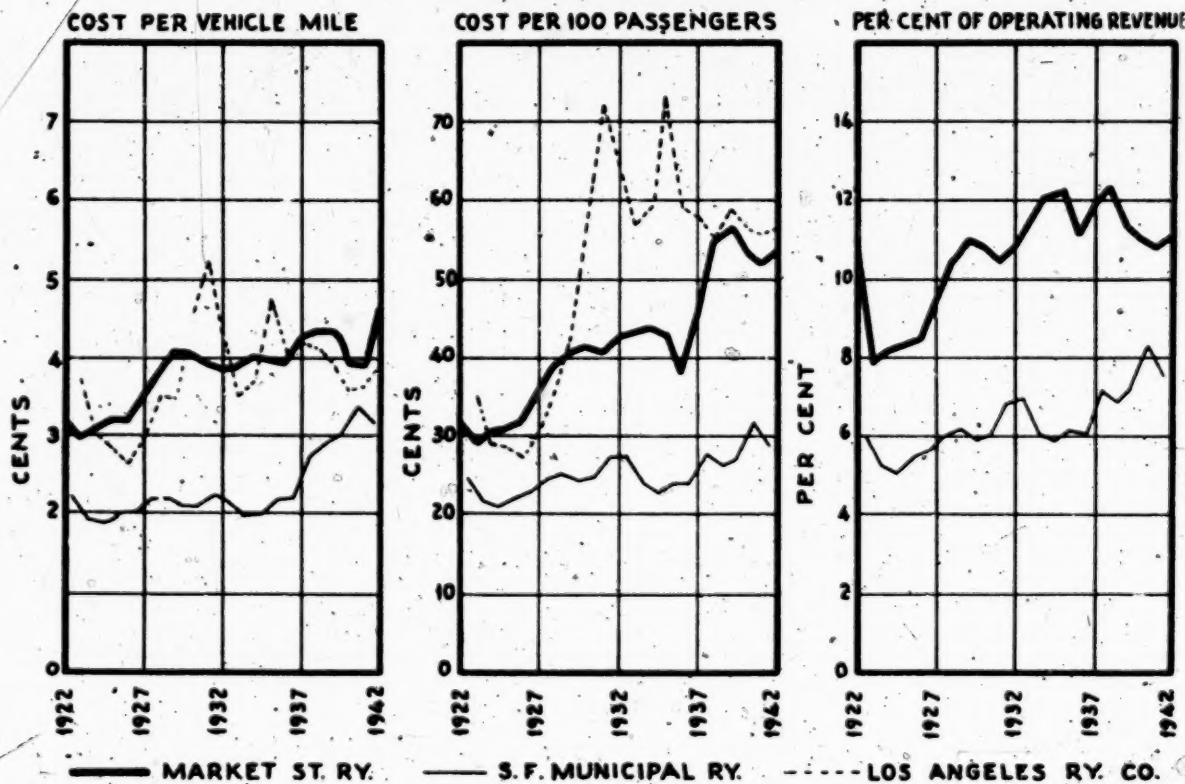
RAIL AND BUS COMBINED

: Year:	Amount	: Index : :(1922= : 100)	: Cost : : per : Car-Mile	: Cost : : per : Car-Hour	: Cost : : per 100: : Pas-	: Per Cent: : of Total: : Operating:	: Per Cent: : of Total: : Operating:
						Expense	Revenue
1922	\$11,711.79	79	3.23	29.1	31.9	11.83	12.45
1923	754,345.61	74	2.97	26.6	29.0	11.04	7.87
1924	808,523.50	79	3.14	26.2	30.8	11.49	8.24
1925	\$22,235.82	80	3.19	26.5	31.1	11.66	8.35
1926	815,092.64	82	3.16	26.6	31.9	11.43	8.93
1927	938,310.03	91	3.52	31.5	35.6	12.28	9.49
1928	1,026,193.24	100	3.83	34.6	39.2	13.25	10.45
1929	1,072,461.07	104	4.08	37.3	40.9	14.36	10.69
1930	1,040,895.13	101	4.05	37.2	41.5	14.28	10.85
1931	962,660.37	94	3.91	36.4	40.8	14.03	10.47
1932	928,056.25	90	3.85	36.7	42.7	14.20	10.88
1933	900,505.56	88	3.87	37.6	43.3	15.16	11.51
1934	897,504.12	87	4.02	38.8	43.8	15.10	12.12
1935	889,074.02	87	3.98	41.1	43.0	15.06	12.22
1936	815,084.88	79	3.94	37.1	38.1	13.77	11.17
1937	852,068.15	83	4.28	39.8	45.4	14.27	11.87
1938	799,463.44	78	4.36	40.7	55.3	14.32	12.35
1939	733,179.89	71	4.36	41.3	56.6	13.91	11.40
1940	668,967.85	65	3.92	37.9	53.6	13.21	11.02
1941	656,098.82	64	3.80	37.4	52.0	13.29	10.82
1942	\$37,505.18	82	4.83	45.0	53.8	15.01	11.06

* Rail and bus combined

Total passengers - rail and bus

COMPARISON OF UNIT COSTS



[fol. 416] Account 86—Law Expense

To this account are charged half the salaries and, with certain exceptions, half the expenses of the Law Department, the remainder being charged against injuries and damages. Estimated accruals are charged to this account monthly, the final charge being such that the total charge for the year equals the year's expenses.

Account 88—Pensions and Gratuities

The charges to this account represent actual pension allowances on an informal basis paid to former employees. The trend of such charges has been steadily downward since 1937. The charge to this account for May, 1943, was \$2,152.50. There were 59 persons on the pension roll as of June 30, 1943. The largest pension, \$209 per month, is being paid to a former maintenance superintendent.

Account 92—Injuries and Damages

This is the largest account in the general and miscellaneous group, the 1942 charges of \$407,500 representing 49 per cent of the total group. The trend of charges to this account for the last five years is shown in the following tabulation:

Year	Amount	Index
1938	\$349,259	100
1939	310,000	89
1940	267,500	77
1941	260,500	75
1942	407,500	117

The charges to Account 92 are credited to the Reserve for Injuries and Damages, together with comparatively small amounts of construction overhead credits. Against the reserve are charged expenses of the Claims Department, Medical Department, and Law Department having to do with injuries and damages. The following tabulation summarizes the transactions through the Injuries and Damages Reserve for the years 1941 and 1942 and the first four months of 1943.

Item	Year 1941	Year 1942	4 Months of 1943
Credits:			
Appropriation charged Ac. 92.....	\$260,500.00	\$407,500.00	\$130,000.00
Construction overhead credits.....	2,114.66	1,077.42	124.00
Total credits.....	262,614.66	408,577.42	130,124.00
Debits:			
Claims Dept. expense.....	164,679.05	237,532.27	113,233.76
Medical Dept. expense.....	7,424.69	7,601.61	3,821.96
Law Dept. expense.....	73,733.98	78,348.81	23,054.51
Total debits.....	245,837.72	323,482.69	140,110.23
Balance—End of Period.....	\$35,977.06	\$121,071.79	\$111,085.56

[fol. 417] G—Transportation for Investment—Credit

This account is for the purpose of crediting operating expenses with the cost (estimated if not known) of transporting men engaged in and materials to be used for new construction and for additions and betterments when such expenses have been charged to operating expense accounts. The credits to this account have been small, the largest credit in recent years being \$16,600 in 1935. The credit in 1942 was \$7,839.

[fol. 418]

Chapter V

Taxes.

A wide variety of taxes is imposed upon corporations by local, state and federal authorities. They are based variously upon net income, property values, gross receipts, wages, and other factors. Some taxes are charged as taxes and others follow the item to which they apply into operating expenses or capital.

In 1942 approximately 81 per cent of Market Street Railway's tax charges, which aggregated \$524,000, were included in Account 215, Taxes Assignable to Railway Operations, and 19 per cent in other accounts. The trend of annual charges to Account 215 is shown by the following tabulation:

Account 215—Taxes Assignable to Railway Operations 1922-1942

Year	Amount	Index*	Year	Amount	Index*
1922	\$604,200	100	1932	\$399,000	66
1923	617,100	102	1933	382,000	63
1924	617,000	102	1934	416,000	69
1925	617,000	102	1935	328,009	54
1926	617,000	102	1936	306,500	50
1927	605,000	100	1937	402,000	66
1928	607,000	100	1938	432,000	71
1929	595,000	98	1939	424,000	70
1930	556,009	92	1940	416,000	69
1931	448,500	74	1941	416,000	69
			1942	425,500	70

* 1928=100.

Table 5-1 is a summary of charges to Account 215, by taxing authority and class of tax, for the years 1938 to 1942, inclusive, State and local taxes made up 88 per cent of the 42 charges, the largest item being ad valorem taxes on real and personal property. These amounted to \$200,396 or 88 per cent of the total 1942 charges to Account 215. The Federal taxes included only unemployment insurance and age benefits taxes and a small amount of auto use tax. No Federal income taxes have been paid by the company for any years.

A brief discussion of the various taxes follows:

Table 5-1

Market Street Railway Company

Summary of Taxes Charged to Account 215—Taxes Assignable to Railway Operations 1938-1942

Taxing Authority and Class of Tax	1942				% of Ac. 215 Total
	1938	1939	1940	1941	Amount
State and Local Taxes					
Corporation Franchise.....	\$150.00	\$100.00	\$100.00	\$100.00	\$75.00 0.02
Auto License—Work Autos.....	2,601.57	3,843.21	{ 1,147.99	1,094.90	1,012.97 0.24
—Motor Coaches.....			{ 11,566.83	18,796.70	17,568.58 4.13
Motor Coach Transportation Tax—State (3%).....	—	—	144.04	487.69	677.04 .16
Unemployment Insurance*.....	103,261.94	100,606.39	95,647.52	88,587.20	94,460.17 22.20
City and County (ad valorem).....	228,839.63	219,995.52	210,132.05	210,726.64	200,396.12 47.10
Franchise—City and County of S. F.....	39,565.45	38,961.75	38,407.92	39,027.70	48,378.51 11.37
City of San Mateo.....	250.00	228.64	240.00	234.23	273.59 0.06
Mkt. & Sutter Sts. Arc Lights.....	12,624.66	12,504.59	12,506.15	12,517.64	12,605.41 2.96
Right of Way—Golden Gate Park.....	100.00	100.00	100.00	100.00	100.00 0.02
Subtotal—State and Local.....	387,393.25	376,340.10	369,992.50	371,672.70	375,547.39 88.26
Federal Taxes					
Unemployment Insurance*.....	11,473.57	11,178.49	10,627.52	10,229.39	11,338.39 2.67
Old Age Benefits*.....	34,953.18	30,481.41	35,379.98	34,097.91	37,793.89 8.88
Other.....	1,820.00†(a)	—	—	—	820.33(b) 0.19
Subtotal—Federal.....	44,606.75	47,659.90	46,007.50	44,327.30	49,952.61 11.74
Total Account 215.....	\$432,000.00	\$424,000.00	\$416,000.00	\$416,000.00	\$425,500.00 100.00%

NOTES:

* Part of these taxes is charged to other accounts. The amounts included here are the charges to Ac. 215.

(a) Capital stock tax.

(b) Auto use tax.

† Red Figure.

[fol. 420] State Corporation Franchise

The charge of \$75 in 1942 represents the minimum charge for Market Street Railway Company and its two subsidiaries.

State Motor Coach Transportation

This is a tax of 3 per cent upon the gross receipts of coach lines traversing county territory. A portion of the tax, applicable to chartered coach operations, is deducted from the corresponding revenue.

Unemployment Insurance

This is a tax, based upon the wages of employees, imposed by both the state and federal governments. The 1942 rate of 2.8 per cent consisted of 2.5 per cent state and 0.3 per cent federal. The 1943 total rate has been reduced to 1.8 per cent as a result of the company's past record. A portion of this tax is charged to construction.

Old Age Benefits

This is a 1 per cent federal tax applied upon the first \$3,000 of each employee's wages. The employee pays a like amount. A portion of this tax is allocated to construction.

City and County Ad Valorem

The 1942 charge of \$200,396 comprises half of the tax applicable to the fiscal year 1941-1942 and half of the tax applicable to the fiscal year 1942-1943. It represents payments to the City and County of San Francisco (about 92 per cent of the total), San Mateo County, and the cities of San Mateo, Burlingame, South San Francisco, San Bruno, and Daly City.

San Francisco Franchise

To determine this tax the rate of .006415 is applied to the sum of operating revenue and advertising revenue. The tax represented 11.4 per cent of the total charges to Account 215 in 1942.

San Mateo Franchise

This tax is based upon 2 per cent of gross receipts in the City of San Mateo. To compute the tax, receipts of the

company's No. 40 line are prorated according to track mileage inside and outside the city of San Mateo.

Arc Lights—Market and Sutter Streets

This tax represents the cost of operating 213 arc lights on Market Street and 52 on Sutter Street at \$4 per lamp per month, less credit for outages.

[fol. 421] Federal Income and Excess Profits

The returns filed by the company for 1941 showed no liability for either income or excess profits tax. Returns for 1942 have not yet been filed, the company having been granted two 60-day extensions. No amounts were accrued in 1941 or 1942 for either income or excess profits tax.

Taxes Charged to Other Accounts

State and federal taxes on gasoline and the state tax on Diesel fuel follow the cost of the fuel into operating expenses. The sales and use tax and federal excise tax on motor coaches are capitalized, while the same taxes on other autos are charged to operating expense. The federal 5 per cent tax on motor coach fares of 35 cents or over is deducted from the corresponding revenue.

Allocation to Rail and Motor Coach Operations

Of the 1942 charges to Account 215, \$365,068 or 85.8 per cent was allocated to electric and cable operations, including trolley coach operations, and \$60,432 or 14.2 per cent to motor coach operations.

[fol. 422]

Chapter VI

Road and Equipment

The road and equipment account of Market Street Railway Company is not segregated by primary accounts as provided in the Uniform System of Accounts for Electric Railways, but is carried in the books as the sum of two accounts, namely (1) Railroads, Properties, and Franchises, and (2) Additions and Betterments to Road and Equipment.

The company's general ledger shows the following amounts in these two accounts as of April 1, 1921:

Ac. 401—Railroads, Properties, and Franchises	\$46,775,296.95
Ac. 401—Additions and Betterments to Road and Equipment	75,973.96
Total Road and Equipment	\$46,851,270.91

Additions and betterments and retirements have been reported annually to the Commission by primary accounts. These are summarized in Table 6-1, the additions by groups of property and the retirements in total. The book amount of road and equipment as of December 31, 1942, \$41,768,505, was 87% of the amount in the peak year 1926.

In response to a request by the Commission the company submitted with its 1941 and 1942 annual reports a segregation of road and equipment by primary accounts. In submitting this schedule in 1941 the company made the following statement in a letter to the Commission:

"As requested, we are enclosing as a supplement to our 1941 report, Schedule 211, Road and Equipment, segregating this investment as between rail and motor coach properties.

"This schedule, for the first time, gives a breakdown of property values by primary accounts, which values have been obtained from a schedule prepared by Mr. A. R. Franklin in an income tax case some time ago. The motor coach values at December 31, 1940, with the exception of Account 530, represent the estimated value of our investment in our motor coach garage, formerly our Twenty-fourth Street Car House, the value being obtained from the Railroad Commission's valuation of 1920."¹

¹ Letter dated May 5, 1942, signed by George H. Engels, General Auditor, attached to 1941 Annual Report.

[fol. 423]

Table 6-1

Market Street Railway Company
Road and Equipment

1921-1942

Additions and Betterments

Year	Way & Structures	Equipment	Power	Miscellaneous	Total A's & B's	Retirements and Other Credits	End of Year Balance	Index (1929=100)
April 1, 1921 Balance								
1921*	\$157,070.12	\$42,352.96	\$18,900.05	\$	\$218,323.13	\$206,864.73	\$46,851,270.91	98.5
1922	203,914.21	27,796.54	9,977.86	—	241,688.61	51,378.96	46,862,729.31	98.5
1923	145,224.55	85,998.50	71,065.25	—	302,288.30	—	47,053,038.96	98.9
1924	168,040.25	132,163.68	59,461.21	—	359,665.14	97,563.66	47,355,327.26	99.6
1925*	146,294.98	102,434.16	2,479.18	—	251,208.32	—	47,617,428.74	100.1
1926	86,334.79	39,938.18	—	—	126,272.97	—	47,868,637.06	100.7
1927	116,539.75	182,290.53	74,254.08	—	373,084.36	760,051.41	47,994,910.03	100.9
1928	20,577.79	193,685.99	303.02	—	214,566.80	269,997.09	47,607,942.98	100.1
1929	142,909.72	97,427.26	—	—	240,336.98	208,846.61	47,552,512.69	100.0
1930	31,502.52	81,998.19	—	—	113,500.71	424,292.02	47,584,003.06	100.1
1931	244,265.00	114,593.49	—	12,959.69	371,818.18	511,847.02	47,273,211.75	99.4
1932*	327,301.86	172,939.16	—	25,210.29	525,451.31	385,023.19	47,133,182.91	99.1
1933	80,242.69	60,573.82	—	4,000.37	144,816.88	232,581.21	47,273,611.03	99.4
1934	21,797.09	47,164.52	—	2,006.95	71,567.66	440,605.51	47,185,846.70	99.2
1935	333,237.67	245,695.88	—	73,666.44†	505,267.11	1,235,870.64	46,816,808.85	98.5
1936	156,752.46	294,137.51	—	3,121.33	454,011.30	719,941.64	46,086,205.32	96.9
1937	140,487.45	32,186.78	—	1,967.46	174,641.69	570,647.88	45,820,274.98	96.4
1938	14,211.27	66,569.01	1,190.93	1,722.57	82,693.78	215,088.99	45,424,268.79	95.5
1939	17,559.79	405,758.68	—	369.99	423,688.46	737,304.83	45,291,873.58	95.2
1940	10,084.13	248,886.72	—	175.03	259,145.90	941,932.87	44,978,257.21	94.6
1941	44,109.34	469,898.80	—	1,021.84	515,029.98	1,891,040.94	44,295,470.24	93.2
1942	6,594.13	132,924.56	—	170.55	139,689.24	1,290,643.32	42,919,459.28	90.3
Total	\$2,615,051.58	\$3,277,414.92	\$237,631.58	\$21,341.27*	\$0,108,756.81	\$11,191,522.52	41,768,505.20	87.8

* 6 months only.

[fol. 424] This segregation of road and equipment by primary accounts is shown in Table 6-2 as of December 31, 1942. The table shows amounts for rail and motor coach operations separately, as well as for the combined operations. Motor coach operations represented 3.5% of the road and equipment account as of December 31, 1942, according to this segregation. Referring to Table 6-2, approximately 60% of the total book investment in road and equipment is in way and structures and 25% in equipment. Interest during construction, totaling \$3,133,000, makes up half the remainder, or 7.5% of the road and equipment account.

C. R. C. Historical Cost Valuation—1920

The Commission's Engineering Department prepared a historical valuation of the Market Street Railway properties as of June 30, 1920, and found the historical reproduction cost of road and equipment as of that date to be \$29,715,147.

This valuation has been brought forward to December 31, 1942, by adding additions and betterments and deducting retirements as reported in the annual reports. The book retirements of property which was in service on June 30, 1920, have been based upon the above valuation. Table 6-3 sets forth by accounts the results of bringing this valuation up to the end of 1942. It shows a total amount for the road and equipment account of \$25,343,543 as compared with the \$41,768,505 on the company's books. There is a difference of \$16,425,000 between the two amounts, the valuation figure being approximately 60 per cent of the book figure.

Table 6-2

VI—Road and Equipment
Market Street Railway Company
Road and Equipment by Primary Accounts*
As of December 31, 1942

Ac. No.	Account	Rail	Motor Coach	Total Amount	Per Cent
501	Way and Structures	\$1,774,511.32	\$5,706.94	\$1,780,218.26	4.26
502	Engineering and Suptce.	409,573.51	—	409,573.51	.98
503	Right of Way	1,926,478.40	56,000.00	1,982,478.40	4.75
504	Other Land	2,668,523.20	—	2,668,523.20	6.39
505	Grading	985,117.63	—	985,117.63	2.36
506	Ballast	537,084.88	—	537,084.88	1.28
507	Ties	3,128,414.35	—	3,128,414.35	7.49
508	Rails, Rail Fastenings and joints	1,633,066.61	—	1,633,066.61	3.91
509	Special Work	733,399.16	—	733,399.16	1.76
510	Underground Construction	2,122,626.74	—	2,122,626.74	5.08
511	Track and Roadway Labor	3,843,368.34	—	3,843,368.34	9.20
512	Paving	118,293.60	—	118,293.60	.28
515	Roadway Machinery and Tools	101,967.46	—	101,967.46	.24
516	Bridges, Trestles and Culverts	75,131.70	—	75,131.70	.18
517	Crossings, Fences and Signs	8,253.66	—	8,253.66	.02
518	Signal and Interlocking Apparatus	801.77	—	801.77	—
519	Telephone and Telegraph Lines	901,272.78	—	901,272.78	2.16
520	Poles and Fixtures	140,457.89	—	140,457.89	.34
521	Underground Conduits	1,810,619.27	—	1,810,619.27	4.33
523	Distribution System	966,349.63	104,274.31	1,070,623.95	2.56
524	Shops and Car Houses	203,630.39	—	203,630.39	.49
529	Stations and Misc. Bldgs. and Structures	738,907.02	—	738,907.02	1.77
	Other Expenditures—Ways and Structures	—	—	—	—
	Subtotal—Way and Structures	24,827,849.32	165,981.25	24,993,830.57	59.83

* From supplemental statement, included in 1942 annual report to California Railroad Commission.

Equipment					
530 Passenger and Combination Cars	5,563,772.45	1,280,958.19	6,844,730.64	16.39	
532 Service Equipment	284,829.39		284,829.39	68	
533 Electric Equipment of Cars	2,519,933.97		2,519,933.97	6.03	
536 Shop Equipment	423,024.56	15,643.09	438,667.65	1.05	
537 Furniture	189,928.35	290.46	190,218.81	46	
538 Misc. Equipment	67,976.95	88.32	68,065.27	16	
Subtotal Equipment	9,049,465.67	1,296,980.06	10,346,445.73	24.77	
[fol. 426]					
Power					
539 Power Plant Buildings	116,993.23		116,993.23	28	
540 Substation Buildings	305,781.42		305,781.42	73	
542 Power Plant Equipment	369,492.00		369,492.00	88	
543 Substation Equipment	445,209.87		445,209.87	1.07	
544 Transmission System	71,561.08		71,561.08	17	
Subtotal-Power	1,309,037.60		1,309,037.60	3.13	
General and Miscellaneous					
545 Franchises	19,331.00		19,331.00	05	
546 Law Expenditures	845,346.34	2,606.86	847,953.20	2.03	
547 Interest during Construction	3,126,412.24	6,993.23	3,133,405.47	7.51	
548 Injuries and Damages	366,874.10	1,312.59	368,186.69	88	
549 Taxes	178,378.10	512.37	178,890.47	43	
550 Miscellaneous	568,572.69	2,842.78	571,415.47	1.37	
Subtotal-General and Miscellaneous	5,104,914.47	14,276.83	5,119,191.30	12.27	
Total	46,291,267.06	1,477,238.14	47,768,505.20	100.00%	
Per cent of total	96.5%	3.5%	100.00%		

Table 6-3
VI—Road and Equipment
Market Street Railway Company
Road and Equipment

C.R.C. Historical Valuation of June 30, 1920

With Net Additions and Betterments to December 31, 1942

Acc. No.	Title	C.R.C. Historical Cost Valuation As of 6-30-20	Net Additions and Betterments 6-30-20 to 12-31-42	C.R.C. Historical Valuation Plus A's & B's to 12-31-42	Per Cent of Total
501	Engineering & Superintendence	\$926,236	\$105,028*	\$821,208	3.2
502	Rights of Way	238,398	3,218	241,616	1.0
503	Other Lands	2,094,353	332,255*	1,762,098	7.0
504	Grading	2,260,475	577,666*	1,682,809	6.6
505	Ballast	910,069	108,191*	801,878	3.2
506	Ties	428,315	30,915*	397,400	1.6
507	Rail fastenings and joints	2,151,179	340,311*	1,810,868	7.4
508	Special work	1,065,225	257,806*	807,419	3.2
509	Underground Construction	1,347,777	604,631*	743,246	2.9
510	Track and Roadway Labor	1,530,260	428,133*	1,104,127	4.4
511	Paving	3,788,534	427,847*	3,360,687	13.3
512	Roadway Mach. and Tools	72,994	7,754	80,748	0.3
515	Steel & Comb. Bridges	59,374	27,463	86,837	0.3
516	Crossings, Fences & Signs	37,437	89	37,526	0.1
517	Signal Apparatus	3,300	3,732	7,032	...
518	Telephone and Telegraph Lines	722,175	114,671*	607,504	2.4
519	Poles and Fixtures	68,960	36,578	105,538	0.4
520	Underground Conduit				

521	Distribution System	1,392,361	35,857*	1,356,504	5.4
523	Shop and Car Houses	1,051,928	262,922*	789,006	3.1
524	Miscellaneous Buildings	191,866*	2,819*	189,047	0.7
529	Other Expenditures—W. & S.		43,683*	43,683*	0.2*
530	Passenger and Comb. Cars	2,976,863	317,380	3,294,243	13.0
532	Service Equipment	178,826	54,969*	123,857	0.5
533	Electric Equip. of Cars	1,927,054	731,086*	1,195,968	4.7
536	Shop Equipment	226,908	73,531	300,439	1.2
537	Furniture	92,512	40,242	132,754	0.5
538	Miscellaneous Equipment	40,363	39,277	79,640	0.3
540	Substation Buildings	181,174	67,826	249,000	1.0
542	Power Plant Equipment	693,393	181,632*	511,761	2.0
543	Substation Equipment	197,389	135,492	332,881	1.3
544	Transmission System	50,530	6,257	56,787	0.2
545	Franchises	19,531	200*	19,331	0.1
546	Law Expenditures	463,118	87,455*	375,663	1.5
547	Interest during construction	1,404,953	294,024*	1,110,929	4.4
548	Injuries and Damages	194,510	24,592*	169,918	0.7
549	Taxes	92,624	17,491*	75,133	0.3
550	Miscellaneous	633,596	157,535*	476,061	1.9
	Undistributed		89,176	89,176	0.4
	Total	\$29,715,147	\$4,371,604*	\$25,343,543	100.0

* Red figures.

Depreciation

The balance sheet of Market Street Railway Company as of December 31, 1942, shows a depreciation reserve of \$1,023,886.71. This depreciation reserve has been accumulated through annual appropriations charged to profit and loss since April 1, 1921, and is the result of the credits and charges shown in Table 7-1.

The depreciation reserve amounted to only 2.45 per cent of the Road and Equipment account or 4.04 per cent of the California Railroad Commission 1920 historical valuation brought up to date. It thus bears little, if any, relation to the accrued depreciation in the property. The assets represented by the depreciation reserve are not carried in a separate fund but have presumably been used to finance additions and betterments and for other corporate purposes. Additions and betterments to the property aggregated \$6,109,000 from April 1, 1921, to December 31, 1942.¹

Appropriations

The annual appropriations appear to have been decided upon arbitrarily and not based upon any depreciation study. For the first four years \$320,000 was added to the reserve each year, and since 1924 the appropriation has been \$500,000 per year, with the exception of three depression years, 1932, 1933, and 1934, when it varied from \$263,000 to \$498,000. The relation of appropriations to net retirement charges, by years, is shown by Chart 7-1.

Although depreciation is recognized as a proper charge to current operating expenses, accounts therefor having been provided in the Way and Structures, Equipment, and Power expense groups, the company has chosen instead to charge the depreciation accrual to profit and loss.

As a test of the reasonableness of the \$500,000 appropriated annually by the company, a study was made to determine an approximate straight-line accrual, following the method outlined below.

The historical cost valuation as of June 30, 1920, prepared by this Commission's Engineering Division, was

¹ See Table 6-1.

ught forward to December 31, 1942, by adding the net additions and betterments for each year, as shown in the company's annual reports. The results of this are shown in Table 6-3 in the preceding chapter. As mentioned there, book retirements of property in service as of June 30, 1940, have been based upon the above valuation.

Approximate straight-line accrual rates were arrived at, based upon a consideration of the rates used in connection with the 1920 valuation, the rates used by Los Angeles Railway Corporation in 1939, and a limited knowledge of other factors which would influence depreciation rates. Ap-

[fol. 429]

Table 7-1
Market Street Railway Company
Depreciation Reserve Summary
1921-1942

Year	Appropriations	Gross Retirements Charged to Reserve	Cost of Removal	Salvage (Credit)	Net Charge to Reserve	Balance as of December 31
1921*	\$320,000.00					\$320,000.00
1922	320,000.00					640,000.00
1923	320,000.00					960,000.00
1924	320,000.00					1,280,000.00
1925	500,000.00					1,780,000.00
1926	500,000.00					2,280,000.00
1927	500,000.00	651,452.40			651,452.40	2,128,547.60
1928	500,000.00	107,265.42		30,633.41	76,632.01	2,551,915.59
1929	500,000.00	191,245.88		17,231.52	174,014.36	2,877,901.23
1930	500,000.00	418,520.96	25,685.09	62,420.65	381,785.40	2,996,115.83
1931	500,000.00	511,847.02	17,068.34	55,543.58	473,371.78	3,022,744.05
1932	262,530.70	385,023.19	26,830.01	178,230.34	227,622.86	3,057,651.89
1933	498,271.23	232,581.21	40,418.48	62,561.30	210,438.39	3,345,484.73
1934	361,467.14	440,605.51	20,699.96	20,953.04	440,352.43	3,266,599.44
1935	500,000.00	1,235,870.64	87,534.41	216,201.01	1,107,204.04	2,659,395.40
1936	500,000.00	719,941.64	40,146.48	94,934.63	665,153.49	2,394,241.91
1937	500,000.00	570,647.88	17,248.68	51,006.36	536,890.20	2,457,351.71
1938	500,000.00	215,088.99	32,960.07	49,701.93	198,347.13	2,759,004.58
1939	500,000.00	704,920.19	25,740.66	33,317.91	697,342.94	2,561,661.64
1940	500,000.00	892,182.70	40,703.51	100,190.22	832,695.99	2,228,965.65
1941	500,000.00	1,884,228.94	40,817.26	120,973.84	1,804,072.36	924,893.29
1942	500,000.00	407,737.72	62,136.91	68,868.05	401,006.58	1,023,886.71
Total	\$9,902,269.07	\$9,569,160.29	\$471,989.86	\$1,162,767.79	\$ 8,878,382.36	

* Nine months only beginning April 1.

(Here follows 1 photolithograph, side folio 430)

MARKET STREET RAILWAY COMPANY

DEPRECIATION ACCRUALS AND NET CHARGES TO DEPRECIATION RESERVE

YEARS 1921 TO 1942

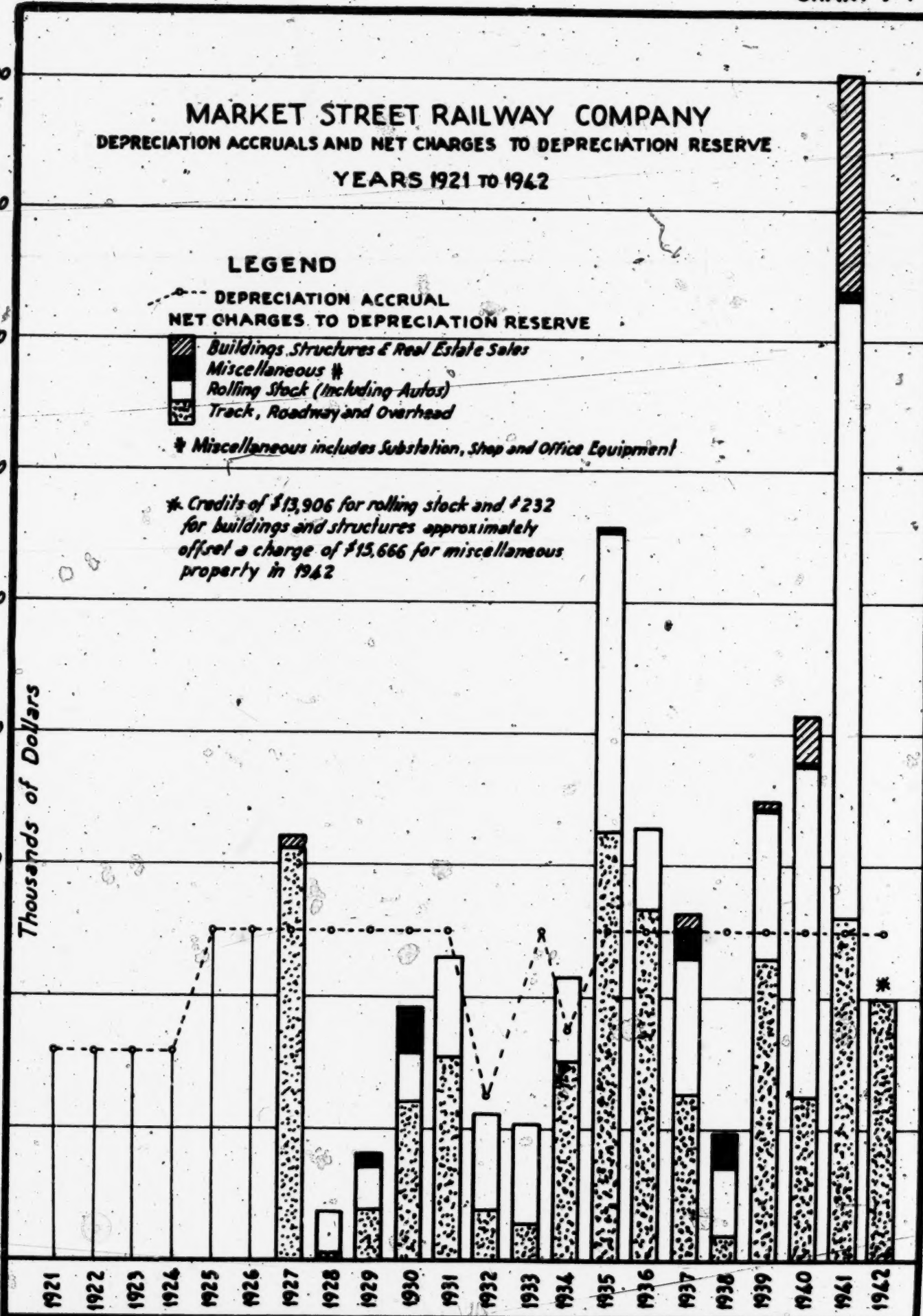
LEGEND

- DEPRECIATION ACCRUAL
- NET CHARGES TO DEPRECIATION RESERVE
 - ▨ Buildings, Structures & Real Estate Sales
 - Miscellaneous *
 - Rolling Stock (Including Autos)
 - ▤ Track, Roadway and Overhead
- * Miscellaneous includes Substation, Shop and Office Equipment

* Credits of \$13,906 for rolling stock and \$232 for buildings and structures approximately offset a charge of \$15,666 for miscellaneous property in 1942

Thousands of Dollars

1800
1600
1400
1200
1000
800
600
400
200
0



[fol. 431] plying these rates to the depreciable capital figures as of December 31, 1942, based upon the 1920 valuation, yields a straight-line accrual of approximately 780,000.

The results of this computation are compared with the company's book depreciation and the book depreciation of the Municipal and Los Angeles railways in the following tabulation:

Company and Item	Depreciation Accrual	Road and Equip- ment Less Lands and Right of Way*	Ratio (Per cent)
Market Street Railway:			
a. C.R.C. capital and accrual	\$779,500	23,340,000	3.34%
b. C.R.C. capital; book accrual	500,000	23,340,000	2.14
c. Capital and accrual per books (1942) ..	500,000	40,527,000	1.23
S.F. Municipal Railway (1941-1942) ..	411,100	10,302,000	3.99
Los Angeles Railway (1942)	1,671,700	41,417,000	4.04

* As of beginning of period.

The O'Shaughnessy Report of 1929 on "Street Railway Requirements of San Francisco" includes, at page 147, a calculation of depreciation accrual by the straight-line method, based upon a reproduction cost new valuation of the Market Street Railway properties as of June 30, 1928. The annual depreciation expense requirement was found to be \$1,389,000 or 3.26 per cent of the reproduction cost new of \$42,679,000 for the depreciable property.

Prior to 1939 the Market Street Railway Company declared considerably greater amounts of depreciation for tax purposes than it appropriated for the depreciation reserve. The annual depreciation declared for tax purposes ranged between \$1,800,000 and \$1,900,000 from 1922 to 1929; between \$1,250,000 and \$1,300,000 from 1930 to 1933; and was \$900,000 per year from 1934 to 1938. Since 1938 it has been \$500,000 per year, the same as the appropriation to the depreciation reserve. The depreciation taken for tax purposes over the period April 1, 1921, to December 31, 1942, aggregated \$26,834,000 as compared with appropriations to the depreciation reserve of \$9,902,000.

Had adequate depreciation expense been charged against operations and credited to the depreciation reserve, the company would have shown a net operating loss each year for at least 5 years prior to 1942. If adequate provision is not made or cannot be made for current depreciation the inevitable result is that some of the capital investment is consumed.

Retirements

There were no charges made to the depreciation reserve prior to 1927. In the years immediately following the reorganization of 1921 a separate Reserve for Renewals was maintained by charges to depreciation accounts 25, 40, and 50, in addition to the annual appropriation for depreciation. Renewals of property were handled through it instead of through the depreciation reserve. Abandonments were in general charged to profit and loss.

Chart 7-1 portrays by years the net retirement charges to the depreciation reserve by types of property up to the end of 1942. The principal charges to the reserve in 1927 were in respect of the abandoned Cliff Line and Montgomery Street Line. In 1928 the reserve was charged with 25 per cent of the retirement of 112 cars destroyed in the years 1925-1928, the other 75 per cent being charged to profit and loss. Records show that a large number of car bodies were rebuilt in the period 1929-1932, the old bodies being retired through the depreciation reserve. The net retirement charge of \$1,107,000 in 1935 includes some \$600,000 for trackage retired or reconstructed and about \$430,000 for 60 cars destroyed or scrapped. The retirement charges since 1935 reflect the abandonment of numerous lines and the retirement of many old cars. In 1941 the destruction of 149 cars contributed about \$950,000 to the net retirement charge, track and roadway retirements \$515,000, and buildings and structures \$304,000.

The depreciation reserve was charged with approximately 29 per cent of the net retirement charge for three car lines abandoned in 1942, the remaining 71 per cent, or about \$883,000 being charged to profit and loss. The percentage of the retirements charged to the depreciation reserve purports to represent the ratio of the aggregate depreciation accruals, up to and including 1942, to the book cost of depreciable property as of December 31, 1942.

[fol. 433]

Chapter VIII

Summary

Trend of Revenues, Expenses, and Net Operating Income

The Market Street Railway Company's business has declined almost continuously since about 1926, the decline being particularly rapid in the depression years 1931 to 1934.

Whereas most businesses experienced at least a partial recovery from the depression level, Market Street Railway's revenues continued to decrease each year except two, until the arrival of the war boom changed the trend in 1942. This despite several successive fare increases in the years 1937 to 1939.

Chart 8-1 and Table 8-1 show the trend of operating revenue and the disposition thereof from 1922 to the present. As revenues declined, maintenance and operating expenses were for several years curtailed, thereby cushioning the effect on net operating income to some extent. During those years, as over the entire period since 1921, inadequate provision was being made for accruing depreciation.

Operating expenses became stabilized about 1934, and continued approximately constant through 1937. A slight increase in business and decreased taxes resulted in some recovery of net operating income in 1935 and 1936. However, the net dropped sharply in 1937, and in 1938 the company experienced a net operating loss. Despite fare increases in May, 1938, and January, 1939, Market Street's 1939 gross revenue did not increase above the 1938 level. However, both maintenance and operating expenses were reduced sufficiently to change the operating net from a loss of \$40,000 in 1938 to an income of \$239,000 in 1939. Most of the decrease in expenses occurred during the year 1938 (See Chart 8-2).

Taxes have fluctuated little from 1937 through 1942, averaging about \$420,000 per year.

On Chart 8-1 the years 1938 to 1943 have been expanded to show the monthly trend of the 12-month totals of revenue, operating expenses, and net operating income. The latter part of the chart shows the steady increase in both operating revenue and net operating income which began in 1941 as a result of the war boom.

Chart 8-2 shows the monthly trend of operating revenue, the various operating expenses, and net operating income from December, 1936, through April, 1943. On the chart have been indicated the several fare changes and other events having a possible bearing upon passenger transportation. The effect upon revenue of introducing the 2-cent transfer charge in July, 1937, was not great. Apparently the loss of regular-fare passengers was approximately offset by the revenue from transfers. However, as shown elsewhere in the report, this fare change reduced transfer

(Here follows 1 photolithograph, side folio 434)

MARKET STREET RAILWAY COMPANY

DISPOSITION OF OPERATING REVENUE

YEARS 1922-1937 AND 12 MONTH-ENDING TOTALS 1938-1943

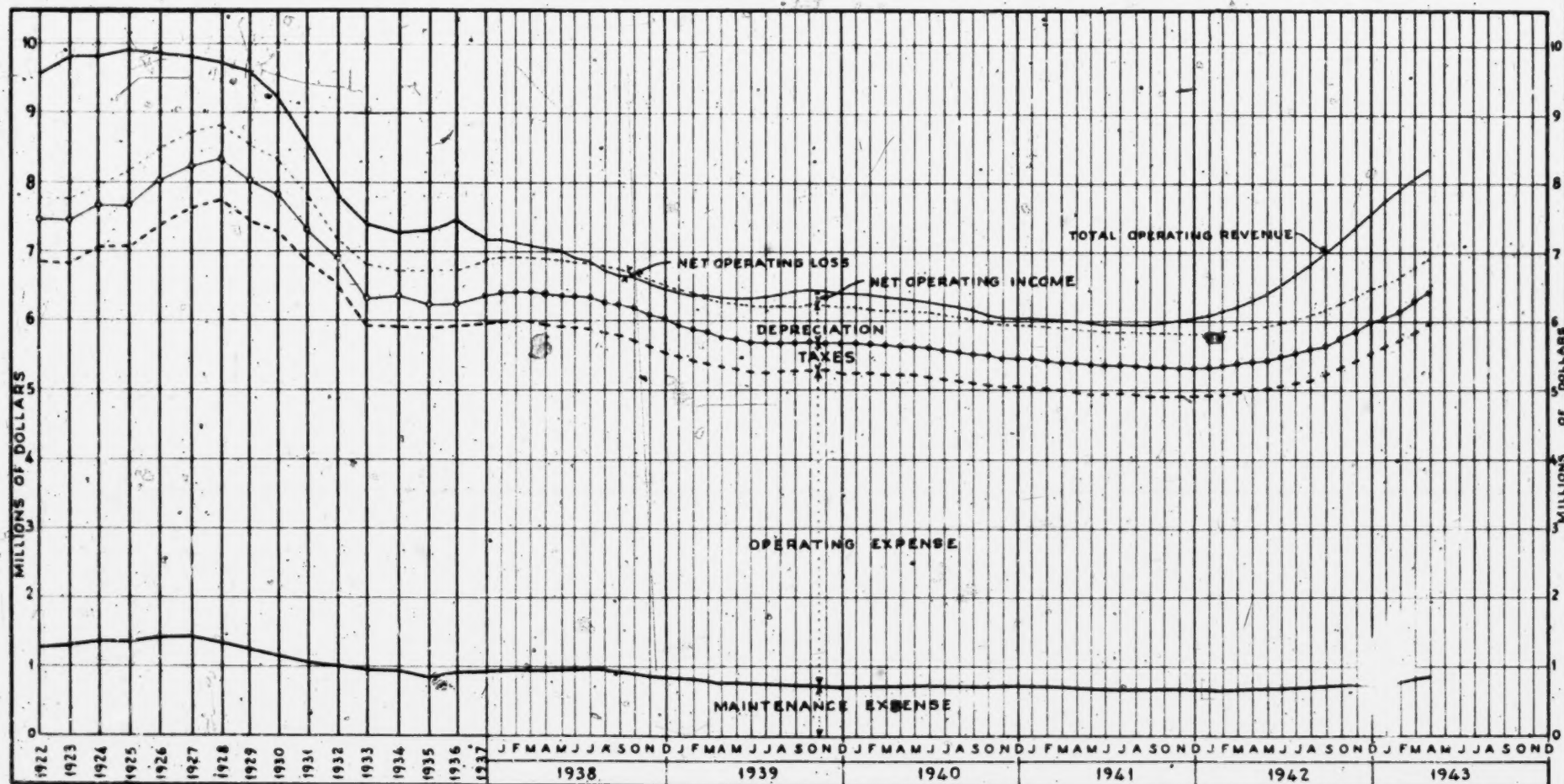


Table 8-1

Market Street Railway Company

Disposition of Operating Revenue

1922-1942 and 12 Months Ended April 30, 1943

Year	Gross Maintenance Expense	Gross Operating Expense	Total Operating Expense*	Operating Taxes	Depreciation	Net Operating Income	Total Operating Revenue
1922	\$1,068,831	\$5,591,207	\$6,860,038	\$604,200	\$320,000	1,799,199	9,583,437
1923	1,298,241	5,535,977	6,834,188	617,100	320,000	2,038,105	9,809,393
1924	1,369,923	5,666,285	7,036,208	617,000	320,000	1,879,152	9,852,360
1925	1,371,896	5,681,144	7,053,040	617,000	500,000	1,732,728	9,902,768
1926	1,416,911	5,976,794	7,393,705	617,000	500,000	1,380,962	9,891,667
1927	1,418,351	6,222,507	7,640,858	605,000	500,000	1,073,712	9,819,570
1928	1,351,262	6,395,351	7,746,613	607,000	500,000	900,848	9,754,461
1929	1,214,684	6,265,754	7,480,438	595,000	500,000	1,025,716	9,590,193
1930	1,141,413	6,148,323	7,289,745	556,000	500,000	853,595	9,196,340
1931	1,034,810	5,855,759	6,893,606	448,500	500,000	757,216	8,569,322
1932	1,007,387	5,538,568	6,535,294	399,000	262,531	608,682	7,805,507
1933	946,588	4,997,303	5,939,749	382,000	498,271	587,396	7,407,416
1934	935,936	4,804,444	5,941,869	416,000	361,467	553,525	7,272,861
1935	837,323	5,068,837	5,902,446	328,009	500,000	593,500	7,323,955
1936	926,131	5,004,843	5,918,367	306,500	500,000	783,486	7,508,353
1937	955,484	5,024,861	5,972,177	402,000	500,000	305,577	7,179,754
1938	880,772	4,706,342	5,582,736	432,000	500,000	40,234†	6,474,502
1939	711,244	4,564,636	5,273,237	424,000	500,000	239,079	6,436,316
1940	714,997	4,353,898	5,065,439	416,000	500,000	87,185	6,068,624
1941	667,614	4,276,644	4,936,329	416,000	500,000	210,345	6,062,674
1942	752,034	4,834,932	5,579,127	425,500	500,000	1,069,914	7,574,541
12 Mo. Ended April 1943	841,335	5,171,527	6,007,028	422,500	500,000	1,281,786	8,211,314

* Reflects credits for Transportation for Investment and, in 1934 and 1935 additional wages under profit-sharing plan.

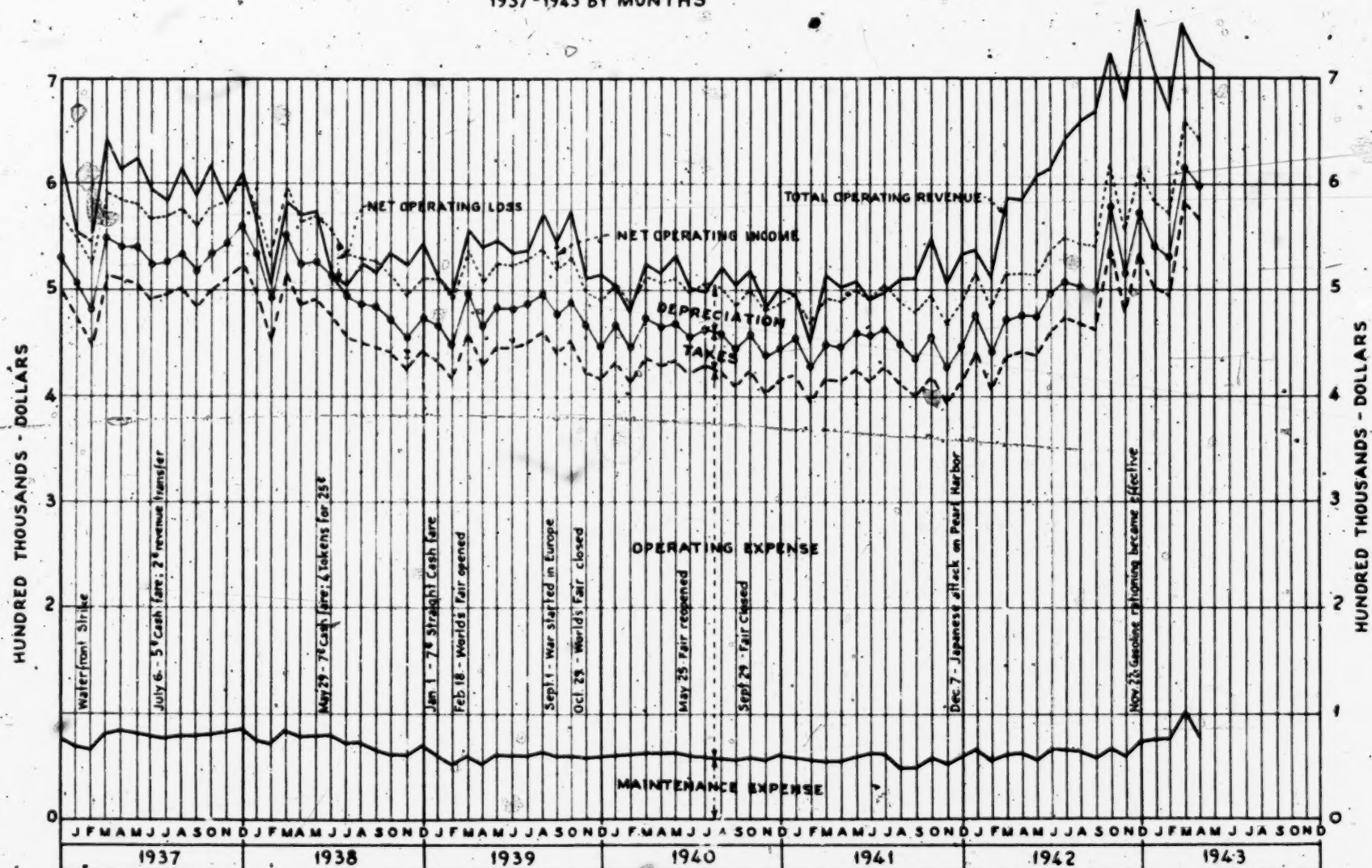
† Red Figure.

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MARKET STREET RAILWAY COMPANY

DISPOSITION OF OPERATING REVENUE

1937 - 1943 BY MONTHS



[fol. 437] usage markedly.* Chart 8-2 does show the immediate adverse effect upon revenue of the change in May, 1938, from a 5-cent fare with 2-cent transfer to a 7-cent fare or four tokens for 25 cents.

The temporary stimulative effect of the Golden Gate International Exposition in 1939, and the rapid increase in traffic and revenue, following our entry into the war in December, 1941, are also apparent. The highest monthly revenue in recent years was recorded in December, 1942, the first month of gasoline rationing.

Maintenance Expenses

On a car-mile and car-hour basis Market Street Railway's expenditures for maintenance of way and structures have been on the whole greater than those of the Municipal Railway and Los Angeles Railway, but as a result of curtailed operations the maintenance per mile of track has decreased greatly in the last six years and in 1941 and 1942 was less than half that of the Municipal Railway (See Table 4-2).

Market Street's expenditures for rail equipment maintenance, on a car-mile and car-hour basis, while considerably lower than Los Angeles Railway's, compared quite closely with the Municipal Railway's expenditures until the last four years, when they have been somewhat lower. Market Street Railway has spent relatively more for maintaining the electric equipment of cars and less for maintaining the cars themselves than the other two systems (See Tables 4-9, 4-11, and 4-12).

Conducting Transportation Expense

Market Street Railway's cost of conducting rail transportation, of which the major part is platform wages, was considerably lower than that of the Municipal Railway for many years, due to lower wages. In recent years, however, Market Street's unit costs have been increasing rapidly and for several years the cost per 100 passengers has been higher than in either the Municipal or Los Angeles railways (See Tables 4-15, 4-19). Market Street's unit costs for conducting bus transportation compare fairly closely with those of the Municipal Railway (Table 4-16).

* See Chart 3-2 in Chapter III, Operating Revenue.

Depreciation

Market Street Railway has, over the entire period from 1921 to the present, set aside inadequate amounts to provide for depreciation currently accruing in the property. This is evidenced by the fact that against road and equipment with an estimated historical cost of about 25 million dollars at the end of 1942, there was a depreciation reserve of only a little over one million dollars at the end of 1942. The [fol. 438] present straight-line depreciation requirement has been estimated at roughly \$790,000 per year, as compared with the book appropriations of \$500,000. Failure to make adequate provision for depreciation as it accrues results inevitably in a consumption of the capital investment.

Effect of Fare Increases

The fare increases granted to Market Street Railway Company by the Commission in 1937, 1938, and 1939, did not result in increases in the company's revenue; rather they have resulted in a considerable shift of passengers to the Municipal Railway and other means of transportation. The 2-cent transfer charge caused a sharp drop in the use of transfers, followed by an immediate increase when the charge was discontinued (Chart 3-2). The introduction of a 7-cent fare in 1938 was accompanied by a sharp decrease in traffic and a lesser decrease in revenue which persisted until the present war boom. Whereas Market Street Railway, as late as 1937, was carrying two-thirds of the revenue passengers carried by it and the Municipal Railway, this ratio has decreased until, in May, 1943, the division was almost equal. Because of Market Street Railway's higher fare the passenger revenue for May divided in the ratio 58 per cent to Market Street and 42 per cent to Municipal (Chart 3-1).

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CASE No. 4680

EXHIBIT No. 11

Witness: Ward Hall.

Date: July 15, 1943.

Commissioner ———.

CALIFORNIA RAILROAD COMMISSION TRANSPORTATION DEPARTMENT—ENGINEERING SECTION

MARKET STREET RAILWAY COMPANY

Case No. 4680

Tables and Charts Relating to Manpower and Service

Ward Hall, Transportation Engineer

San Francisco, California,
July 14, 1943.

[fol. 443]

18—510

Table I

Cars and Motor Coaches Not Available for Service Due to Shortage of Platform Men											
Market Street Railway Company				Municipal Railway of San Francisco				Los Angeles Railway Corporation			
Date	Cars and Motor Coaches Held in During Month	Number Scheduled Cars and Motor Coaches During Month	Per cent of Motor Coaches and Cars Held in During Month	Cars and Motor Coaches Held in During Month	Number Scheduled Cars and Motor Coaches During Month	Per cent of Motor Coaches and Cars Held in During Month	Cars and Motor Coaches Held in During Month	Number Scheduled Cars and Motor Coaches During Month	Per cent of Motor Coaches and Cars Held in During Month	Cars and Motor Coaches Held in During Month	Number Scheduled Cars and Motor Coaches During Month
1942 May	4	12,041	0.0	0	6,862	0.0					
June	30	12,167	0.2	0	6,841	0.0					
July	28	12,422	0.2	1	7,222	0.0					
Aug.	18	12,071	0.2	0	6,999	0.0	230	28,831	0.8		
Sept.	23	12,014	0.2	0	6,928	0.0	247	27,867	0.9		
Oct.	38	12,477	0.3	0	7,192	0.0	481	28,740	1.7		
Nov.	120	11,810	1.0	0	6,795	0.0	609	27,363	2.2		
Dec.	288	12,464	2.3	0	6,803	0.0	423	28,173	1.5		
1943 Jan.	411	12,226	3.4	4	7,056	0.1	536	28,095	1.9		
Feb.	335	11,344	3.0	3	6,499	0.1	445	25,118	1.8		
Mar.	492	12,730	3.9	1	7,403	0.0	687	27,668	2.5		
Apr.	700	12,296	5.7	6	7,134	0.1	1,194	26,829	4.5		
May	873	12,084		4							
June	1,264	12,296	.08	4							

[fol. 444]

Table II

Manpower Situation

Platform Men and Motor Coach Operators

Date	Market Street Railway Company				Municipal Railway of San Francisco				Los Angeles Railway Corporation			
	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent
1942 May.....	1368	1306	62	5	1053	975	78	7	1738	1559	179	10
June.....	1375	1322	53	4	1068	980	88	8	1705	1542	163	10
July.....	1381	1317	64	5	1077	953	124	12	1701	1514	187	11
Aug.....	1384	1320	64	5	1088	1015	73	7	2034	1825	209	10
Sept.....	1384	1298	86	6	1057	1019	82	8	2046	1797	249	12
Oct.....	1392	1274	118	8	1087	1052	35	3	2032	1813	219	11
Nov.....	1426	1275	151	11	1163	1130	33	3	2047	1829	218	11
Dec.....	1538	1355	183	12	1167	1080	87	7	2046	1905	141	7
1943 Jan.....	1579	1369	210	13	1185	1101	84	7	2056	1907	149	7
Feb.....	1589	1324	265	17	1161	1097	64	6	2064	1913	151	7
Mar.....	1582	1347	235	15	1161	1080	81	7	2071	1869	202	10
Apr.....	1581	1303	278	18	1175	1064	111	9	2086	1824	262	13
May.....	1583	1273	310	20	1163	1077	86	7				
June.....	1600	1243	357	22	1159	1080	69	6				

Table III

Employment Record

Platform Men and Motor Coach Operators

Date	Market Street Railway Company			Municipal Railway of San Francisco			Los Angeles Railway Corporation		
	Gain	Loss	Net	Gain	Loss	Net	Gain	Loss	Net
1942 May.....	68	61	7	49	20	29	148	105	43
June.....	71	48	23	25	20	5	89	108	-19
July.....	62	52	10	11	38	-27	105	140	-35
Aug.....	78	62	16	95	33	62	70	125	-55
Sept.....	63	89	-26	59	55	4	155	114	41
Oct.....	67	86	-19	95	62	33	201	190	11
Nov.....	87	77	10	143	65	78	257	183	74
Dec.....	155	82	73	44	94	-50	322	275	47
1943 Jan.....	128	122	6	85	64	21	218	236	-18
Feb.....	87	130	-43	68	72	-4	144	174	-30
Mar.....	122	100	22	55	73	-18	159	223	-64
Apr.....	73	111	-38	51	67	-16	135	182	-47
May.....	60	86	-26			+13			
June.....	63	91	-28			+13			
Total.....	1,061	1,020	41	780	663	143	2,003	2,055	-52

[fol. 446]

Table IV

Employees on Sick List

Platform Men and Motor Coach Operators

Date	Market Street Railway Company				Municipal Railway of San Francisco				Los Angeles Railway Corporation			
	Estimated No. of men Required	Daily Average No. Men on Sick List	Per Cent	Estimated No. of men Required	Daily Average No. Men on Sick List	Per Cent	Estimated No. of men Required	Daily Average No. Men on Sick List	Per Cent	Estimated No. of men Required	Daily Average No. Men on Sick List	Per Cent
1942 May.....	1368	65	5	1053	70	7	1738	89	5			
June.....	1375	67 ^s	5	1068	77	7	1705	88	5			
July.....	1381	67	5	1077	73	7	1701	98	6			
Aug.....	1384	70	5	1088	82	8	2034	101	5			
Sept.....	1384	78	6	1057	82	8	2046	111	5			
Oct.....	1392	81	6	1087	84	8	2032	122	6			
Nov.....	1426	100	7	1163	102	9	2047	138	7			
Dec.....	1538	114	7	1167	110	9	2046	168	8			
1943 Jan.....	1579	130	8	1185	125	11	2056	192	9			
Feb.....	1589	107	7	1161	105	9	2064	197	10			
Mar.....	1582	101	6	1161	82	7	2071	215	10			
Apr.....	1581	104	7	1175	85	7	2086	209	10			
May.....	1583	97	6	1163	76	7						
June.....	1600	94	6	1159	69	6						

Table V
Manpower Situation
Shopmen

Date	Market Street Railway Company				Municipal Railway of San Francisco				Los Angeles Railway Corporation			
	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent	Estimated No. of men Required	Avail- able	Short- age	Short- age Per Cent
1942 June.....	255	232	23	9	153	151	2	1	739	704	35	5
July.....	—	—	—	—	153	151	2	1	740	701	39	5
Aug.....	265	243	22	8	155	154	1	1	742	673	69	9
Sept.....	—	—	—	—	155	151	4	3	740	661	79	11
Oct.....	276	250	26	9	150	144	6	4	740	678	62	8
Nov.....	—	—	—	—	150	141	9	6	745	693	52	7
Dec.....	277	266	11	4	150	148	2	1	745	692	53	7
1943 Jan.....	—	—	—	—	150	144	6	4	745	680	65	9
Feb.....	326	290	36	11	150	141	9	6	758	717	41	5
Mar.....	—	—	—	—	150	138	12	8	759	705	54	7
Apr.....	335	285	50	15	150	140	10	7	759	676	83	11

[fol. 448]

Table VI
Employment Record
Shopmen

Date	Market Street Railway Company			Municipal Railway of San Francisco			Los Angeles Railway Corporation		
	Gain	Loss	Net	Gain	Loss	Net	Gain	Loss	Net
1942 May	—	—	—	9	7	2	—	—	—
June	11	17	-6	15	12	3	—	—	—
July	—	—	—	11	11	0	—	—	—
Aug.	18	21	-3	22	19	3	57	70	-13
Sept.	—	—	—	17	20	-3	81	107	-26
Oct.	10	18	-8	15	22	-7	155	137	18
Nov.	—	—	—	20	23	-3	150	148	2
Dec.	35	22	-21	19	12	7	134	109	25
1943 Jan.	—	—	—	15	19	-4	129	144	-15
Feb.	12	31	-19	14	17	-3	156	138	18
Mar.	—	—	—	6	9	-3	166	173	-7
Apr.	21	31	-10	4	2	2	115	127	-12
Total	—	—	-57	167	173	-6	1143	1153	-10

Wage Comparison

Platform Men and Coach Operators

Market Street Railway Company Municipal Railway of San Francisco Los Angeles Railway Corporation

Item

Two-Man Car Operation

Students
Platform Men

37½¢ per Hour
First 6 Mos. 73¢ per Hour
2nd 6 Mos. 75½¢ per Hour
Third 6 Mos. 78¢ per Hour
Next 12 Mos. 80½¢ per Hour
Thereafter 83¢ per Hour

\$3.00 per day
First 6 Mos. 80¢ per Hour
2nd 6 Mos. 82½¢ per Hour
Third 6 Mos. 85¢ per Hour
Thereafter 87½¢ per Hour

50¢ per Hour
First Year 70¢ per Hour
2nd Year 76¢ per Hour
Thereafter 80¢ per Hour

One-Man Car Operation
Motor Coach and One-
Man Car Operators

First 6 Mos. 80¢ per Hour
2nd 6 Mos. 82½¢ per Hour
Third 6 Mos. 85¢ per Hour
Next 12 Mos. 87½¢ per Hour
Thereafter 90¢ per Hour

87½¢ per Hour—one rate
to all men

First Year 80¢ per Hour
2nd Year 86¢ per Hour
Thereafter 90¢ per Hour

Annual Vacation with Pay

1 to 3 years inclusive, 9 days
More than 3 years and
less than 5 years, 10 days
5 years or more, 12 days

1 year or over, 12 days

1 day for each two months'
service up to and including
6 days.

Sick Leave with Pay

None

Employees working 6-day week
allowed 12 days per year,
which can accumulate to a
total of 156 days. Time used
is deducted and accumulations
to 156 days continue. Pay al-
lowed if illness extended over
5 days. Five days or less no
pay allowed.

None

[fol. 450]

Table VIII

Wage Comparison

Shop Men

	Market Street Railway Company	Municipal Railway of San Francisco	Los Angeles Railway Corporation
Craft			
Auto Mechanic	82 to 93 1/2 Cents per Hour	\$1.37 1/2 per Hour	85 1/2 to 94 Cents per Hour
Machinist	87 1/2 to 96 1/2 Cents per Hour	1.37 1/2 per Hour	78 to 94 Cents per Hour
Car Repairers	82 to 93 1/2 Cents per Hour	1.00 to 1.10 per Hour	78 to 80 Cents per Hour
Annual Vacation with Pay	1 to 3 years Inclusive, 9 days More than 3 years and 10 days Less than 5 years 12 days 5 years or more None	1 year or over—Employees on 6-day week are paid 12 days.	1 day for each two months service up to and including 6 days.
Sick Leave with Pay		Employees working 6-day week allowed 12 days per year, which can accumulate to a total of 156 days. Time used is deducted and accumulations to 156 days continue. Pay allowed if illness extended over 5 days. Five days or less, no pay.	None

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Table IX

Number of Cars Passing Points on Market Street During Peak Hours

May 24, 1943

Time	Municipal Railway of San Francisco	Market Street Railway Company
	Outside Tracks	Inside Tracks
P.M.		
Outbound of Market Street West of Sansome Street		
0 to 4:40	21	11
0 to 4:50	19	6
0 to 5:00	21	19
0 to 5:10	17	14
0 to 5:20	21	16
0 to 5:30	16	16
	115	82
P.M.		
Outbound on Market Street East of Sansome Street		
0 to 4:40	24	11
0 to 4:50	24	6
0 to 5:00	25	19
0 to 5:10	26	14
0 to 5:20	22	16
0 to 5:30	18	16
	146	82
A.M.		
Inbound on Market Street at 6th Street		
0 to 7:40	11	8
0 to 7:50	12	9
0 to 8:00	12	13
0 to 8:10	12	12
0 to 8:20	10	12
0 to 8:30	16	10
	73	64

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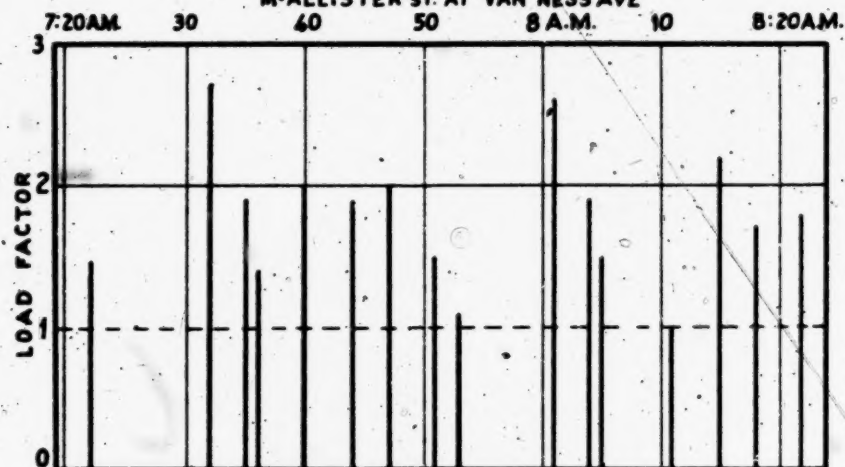
Table X

Average Speed of Street Cars on Market Street

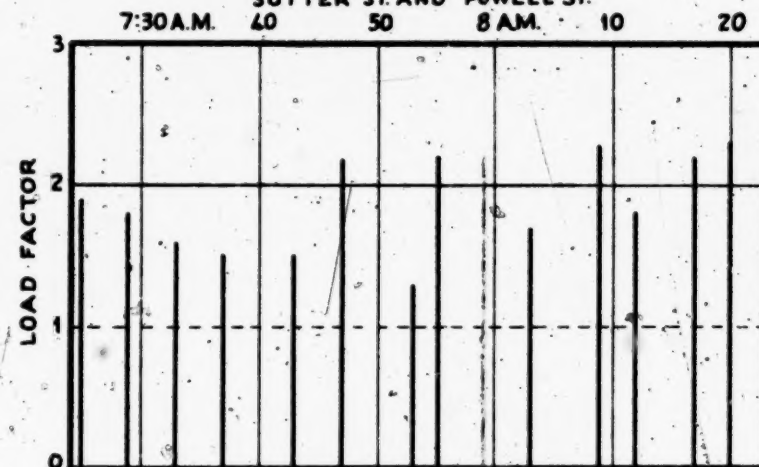
	A.M. 7:30 to 8:30	P.M. 4:30 to 5:30
Market Street Railway Company (Inside Tracks)	7.77 MPH	6.37 MPH
Municipal Railway of San Francisco (Outside Tracks)	7.36 MPH	5.41 MPH

MARKET STREET RAILWAY COMPANY
FREQUENCY OF SERVICE AND LOAD FACTOR
ON SELECTED LINES DURING PEAK OF TRAVEL

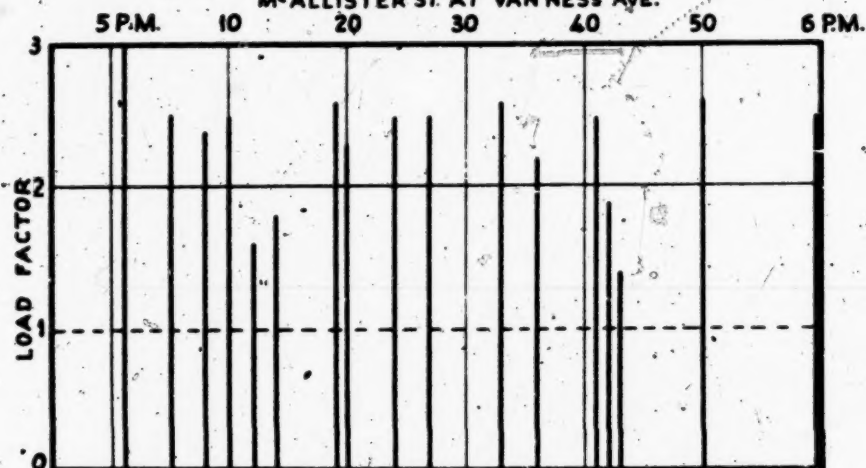
No. 5 LINE INBOUND
7:20 A.M. TO 8:24 A.M. APR. 29, '43
McALLISTER ST. AT VAN NESS AVE.



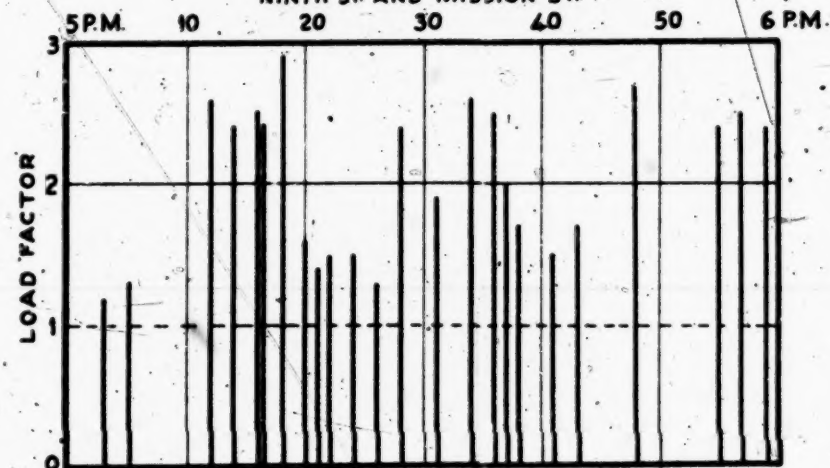
No. 1 & 2 LINES INBOUND
7:24 A.M. TO 8:24 A.M. APR. 30, '43
SUTTER ST. AND POWELL ST.



No. 5 LINE OUTBOUND
5 P.M. TO 6 P.M. APR. 29, '43
McALLISTER ST. AT VAN NESS AVE.



No. 16 LINE OUTBOUND
5 P.M. TO 6 P.M. APR. 30, '43
NINTH ST. AND MISSION ST.



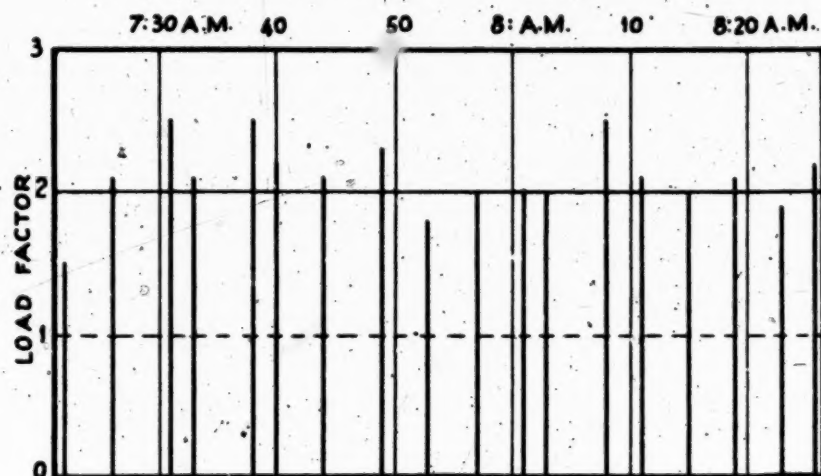
----- SEATED LOAD

CHART NO. 2

SAN FRANCISCO MUNICIPAL RAILWAY
FREQUENCY OF SERVICE AND LOAD FACTOR
ON SELECTED LINES DURING PEAK OF TRAVEL
MARKET ST. AND VAN NESS AVE.

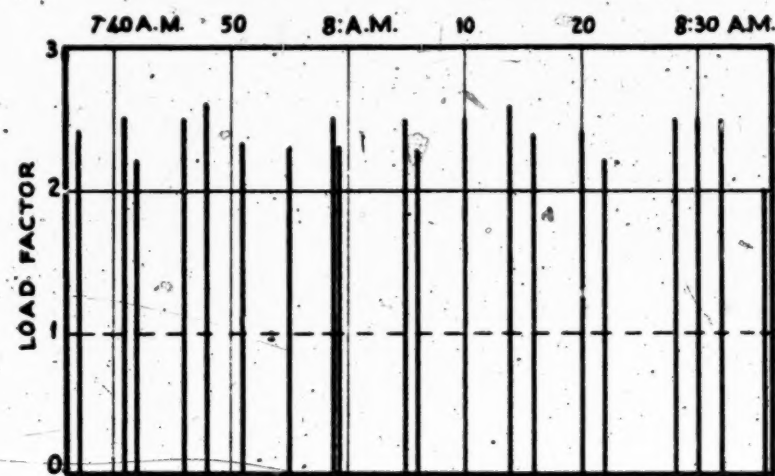
J LINE
7:22 A.M. TO 8:26 A.M.

INBOUND
APR. 29, 43.



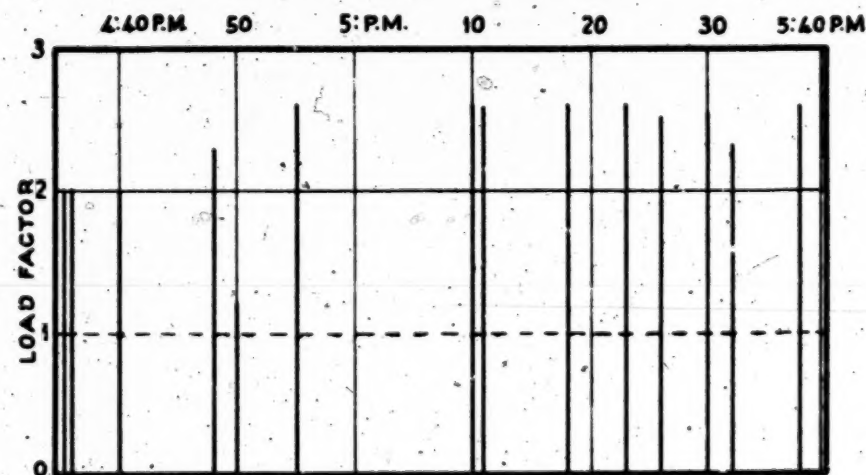
N LINE
7:36 A.M. TO 8:36 A.M.

INBOUND
APR. 29, 43.



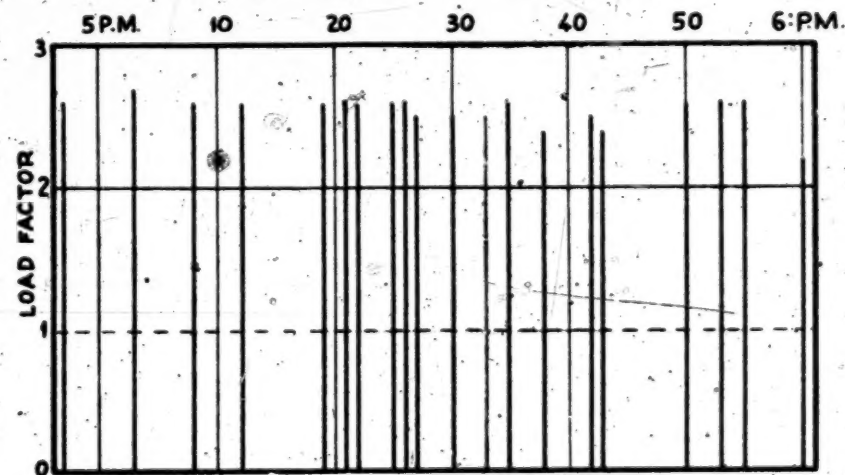
J LINE
4:35 P.M. TO 5:36 P.M.

OUTBOUND
APR. 29, 43



N LINE
4:57 P.M. TO 6: P.M.

OUTBOUND
APR. 29, 43.



----- SEATED LOAD

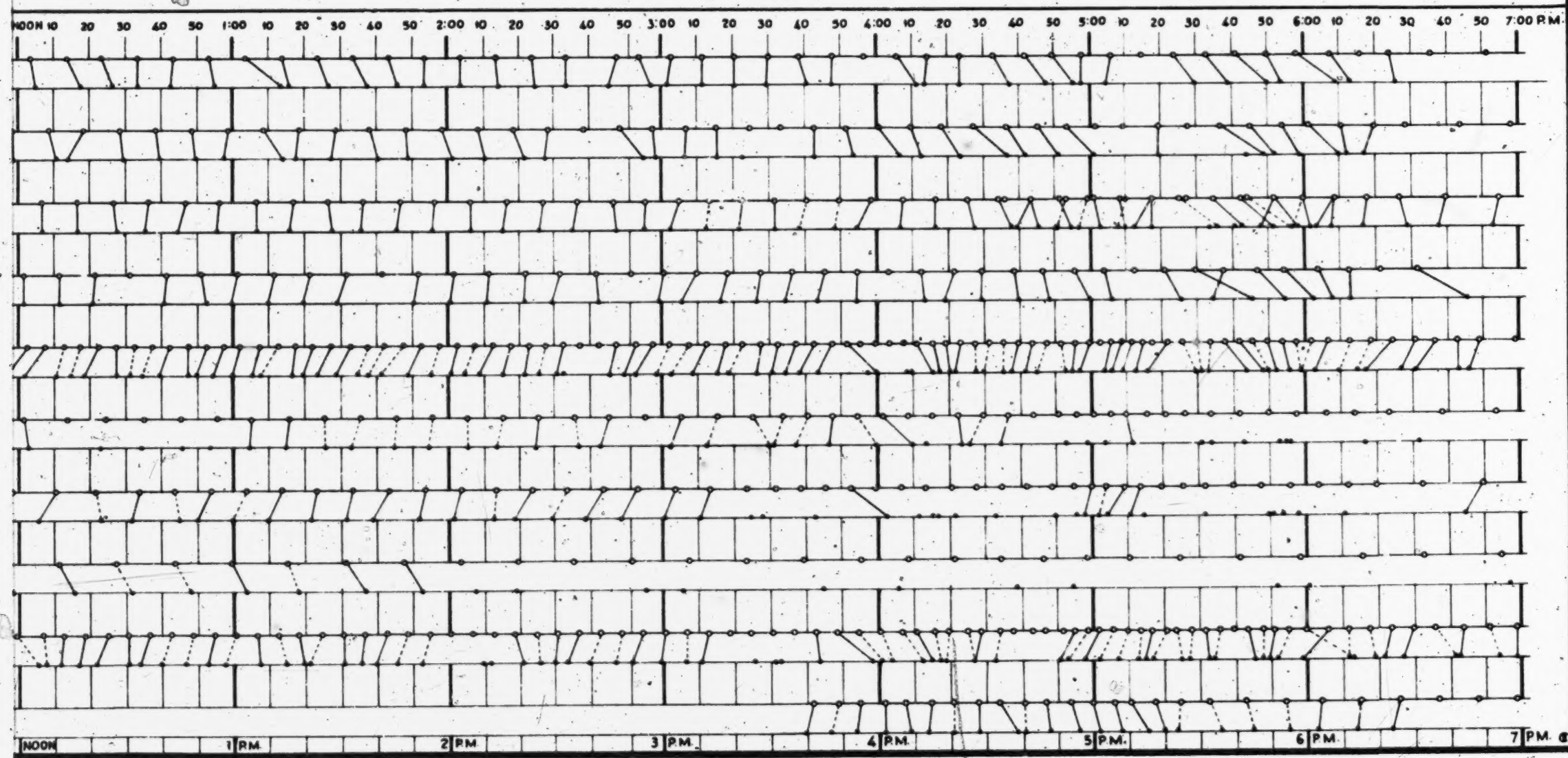
LOCATION	DATE	LINE	TIME	7AM	10	20	30	40	50	8:00	10	20	30	40	50	9:00	10	20	30	40	50	10:00	10	20	30	40	50	11:00	10	20	30	40	50	12NOON	10
SUTTER ST. AND SANSOME ST.	MAY 24 1943	LINE No 1(RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 2 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 3 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 4 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
MARKET ST. AND SANSOME ST.	"	LINE No 5 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 6 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 7 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 8 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
"	"	LINE No 9 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
THIRD ST. AND MISSION ST	MAY 26 1943	LINE No 11 (RAIL) WESTBOUND	SCHEDULE																																
			ACTUAL																																
				7 AM						8 AM						9 AM						10 AM						11 AM					12 NOON		

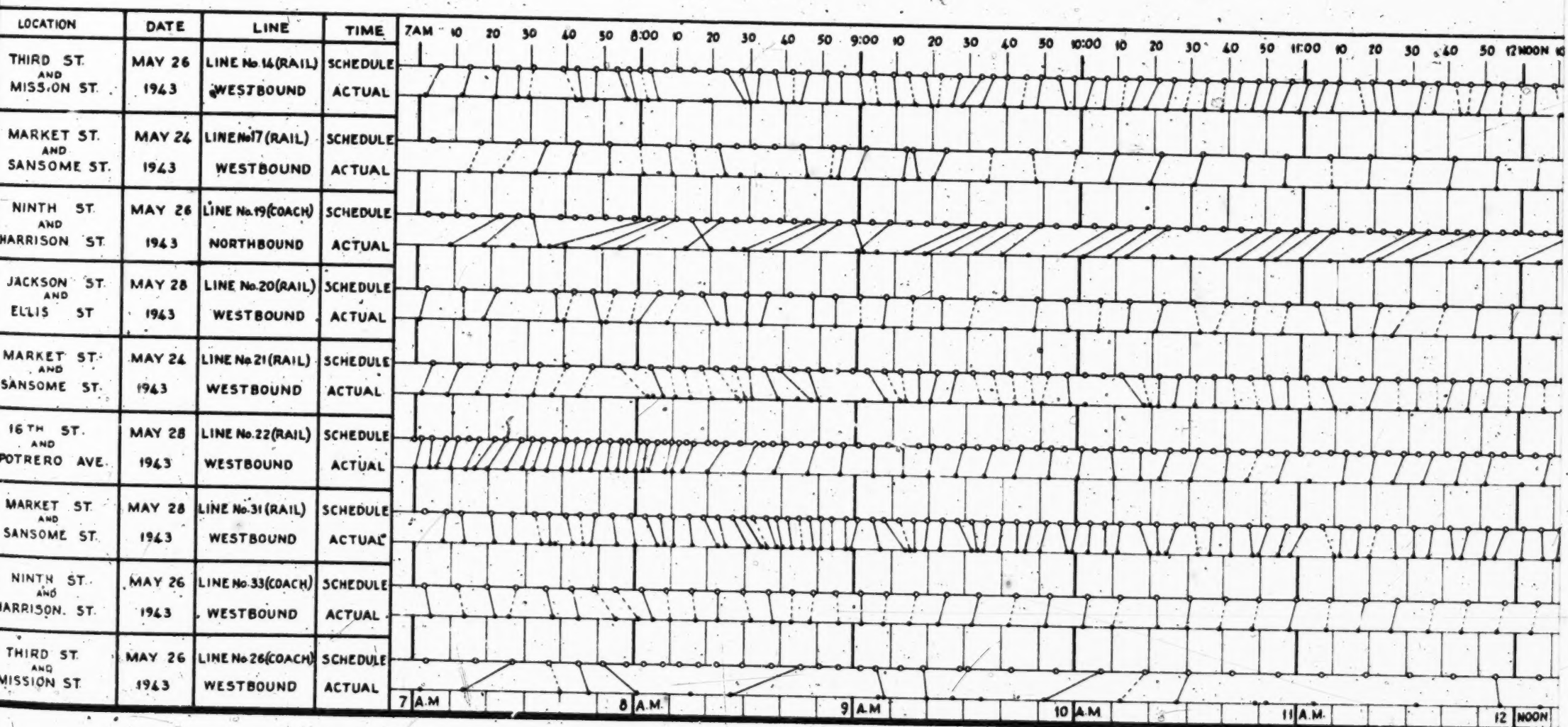
MARKET STREET RAILWAY

CHART SHOWING ACTUAL PERFORMANCE

AS COMPARED WITH OPERATING SCHEDULES

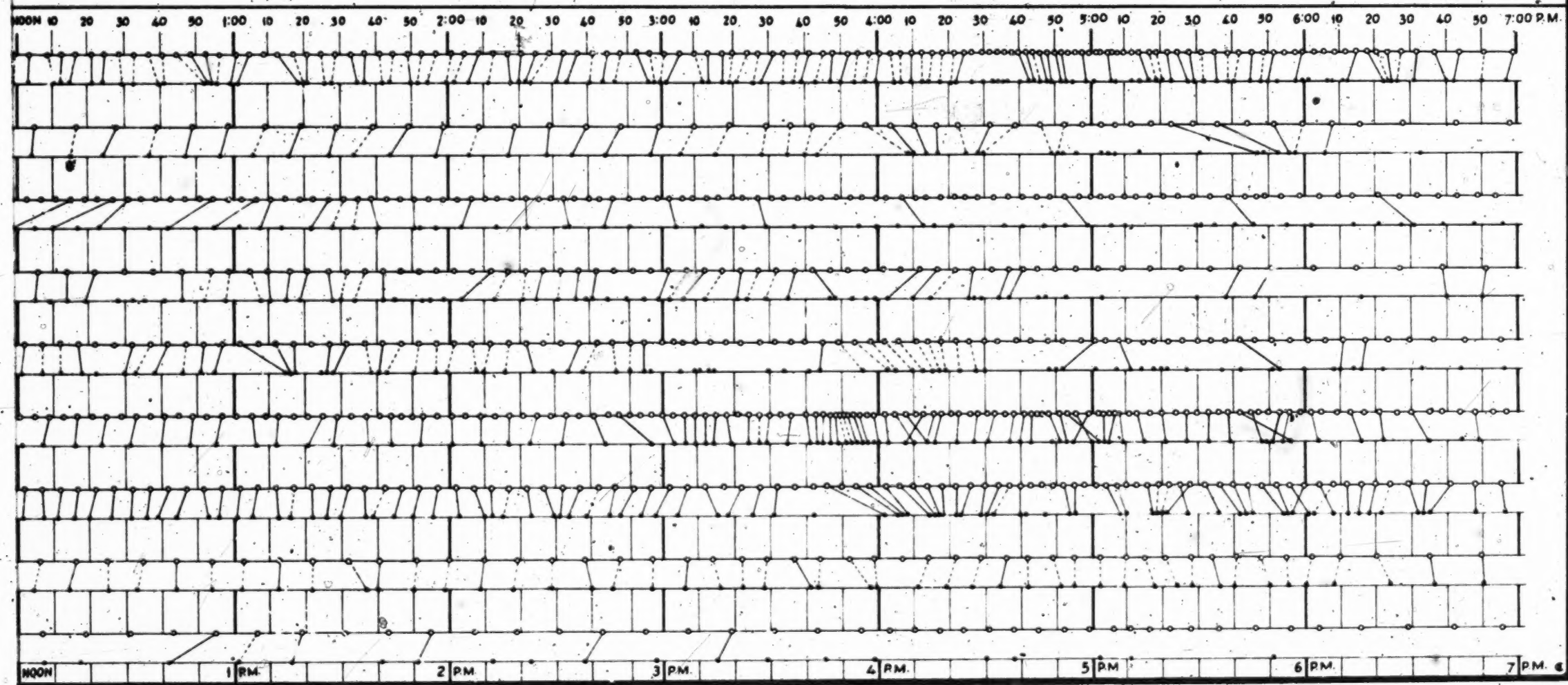
ON DATES AND AT LOCATIONS SHOWN



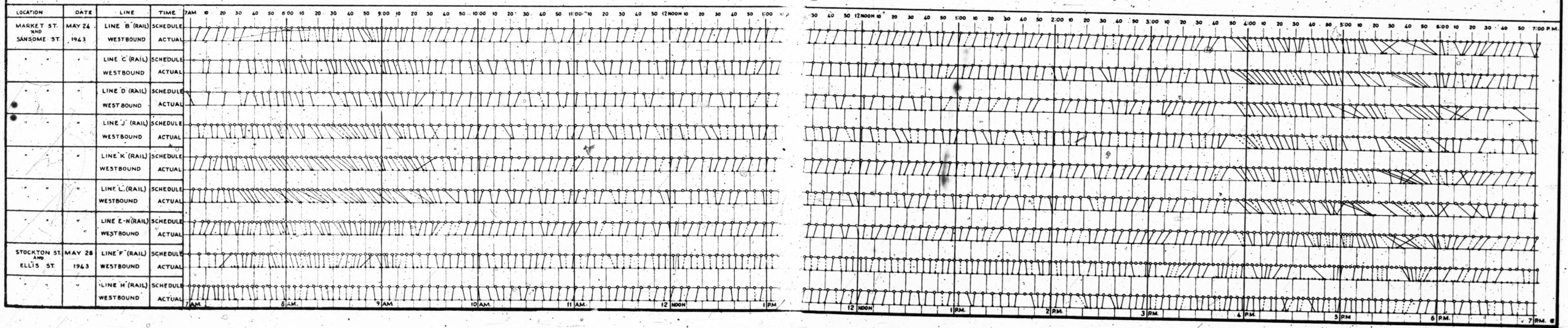


MARKET STREET RAILWAY

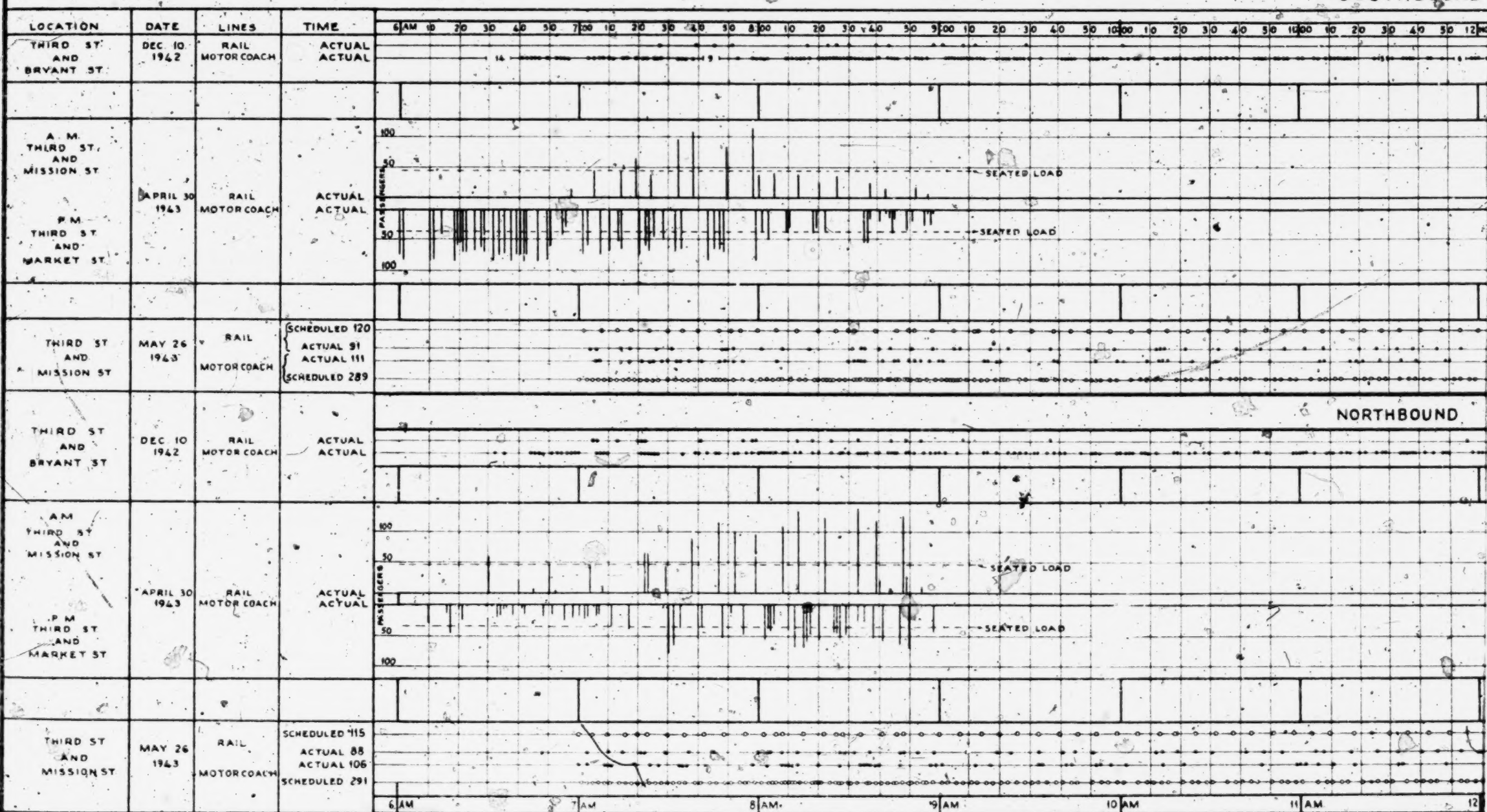
CHART SHOWING ACTUAL PERFORMANCE
AS COMPARED WITH OPERATING SCHEDULES
ON DATES AND AT LOCATIONS SHOWN



SAN FRANCISCO MUNICIPAL RAILWAY
CHART SHOWING ACTUAL PERFORMANCE
AS COMPARED WITH OPERATING SCHEDULES
ON DATES AND AT LOCATIONS SHOWN



SOUTHBOUND

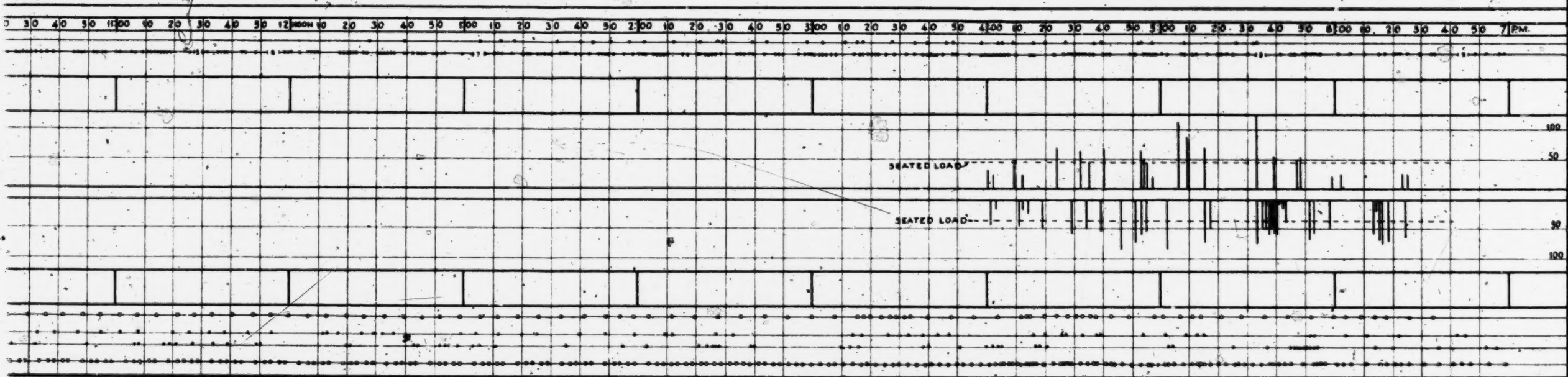


NORTHBOUND

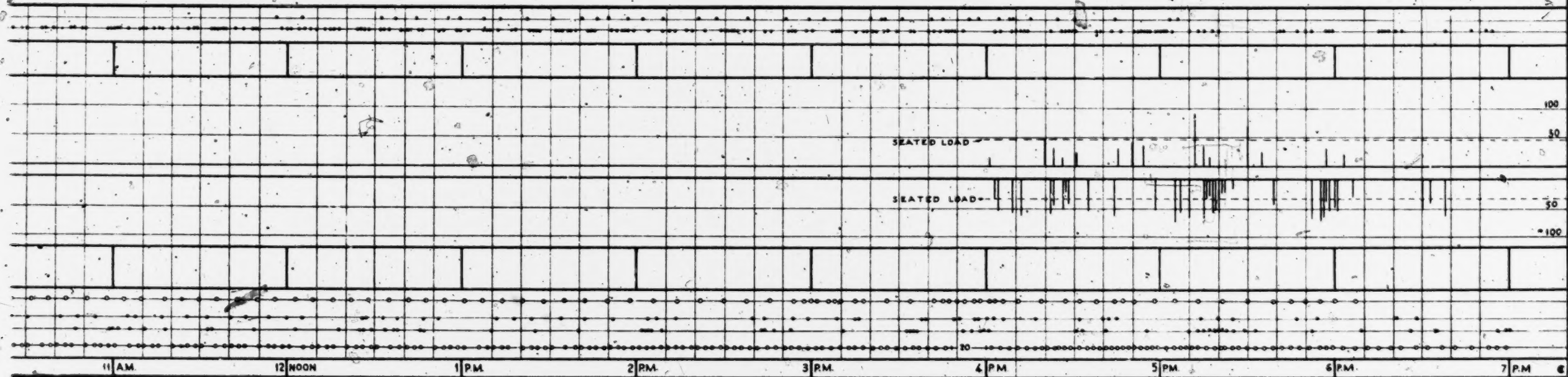
MARKET STREET RAILWAY THIRD ST AND KEARNY ST. OPERATION

COMPARISON OF ACTUAL PERFORMANCE AS COMPARED WITH
OPERATING SCHEDULES AND LOAD CHARACTERISTICS

SOUTHBOUND TRIPS



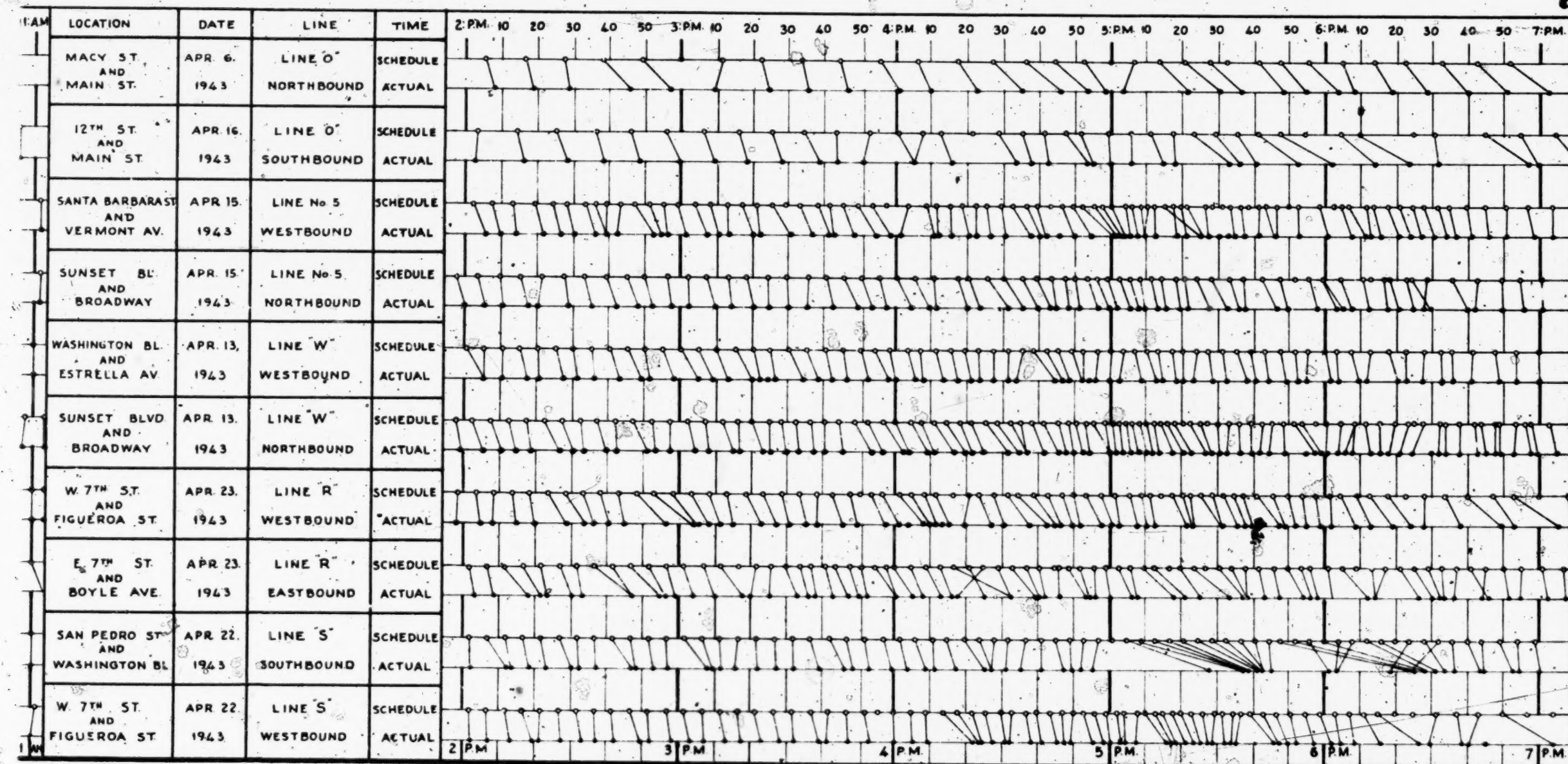
NORTHBOUND TRIPS



LOCATION	DATE	LINE	TIME	7AM 10 20 30 40 50 8AM 10 20 30 40 50 9AM 10 20 30 40 50 10AM 10 20 30 40 50 11AM	LOCATION
MACY ST. AND MAIN ST.	APR 6 1943	LINE "O" SOUTHBOUND	SCHEDULE ACTUAL		MACY ST. AND MAIN ST.
12TH ST AND MAIN ST.	APR 16 1943	LINE "O" NORTHBOUND	SCHEDULE ACTUAL		12TH ST AND MAIN ST.
SANTA BARBARA ST AND VERMONT AVE	APR 15. 1943	LINE No 5 EASTBOUND	SCHEDULE ACTUAL		SANTA BARBARA ST AND VERMONT AV.
SUNSET BLVD. AND BROADWAY	APR 15. 1943	LINE No 5 SOUTHBOUND	SCHEDULE ACTUAL		SUNSET BL AND BROADWAY
WASHINGTON BLVD AND ESTRELLA AV	APR. 13. 1943	LINE "W" EASTBOUND	SCHEDULE ACTUAL		WASHINGTON BL. AND ESTRELLA AV
SUNSET BLVD. AND BROADWAY	APR 13. 1943	LINE "W" SOUTHBOUND	SCHEDULE ACTUAL		SUNSET BLVD AND BROADWAY
W. 7TH ST. AND FIGUEROA ST.	APR 23. 1943	LINE "R" EASTBOUND	SCHEDULE ACTUAL		W. 7TH ST. AND FIGUEROA ST.
E. 7TH ST. AND BOYLE AVE.	APR 23. 1943	LINE "R" WESTBOUND	SCHEDULE ACTUAL		E. 7TH ST AND BOYLE AVE
SAN PEDRO ST AND WASHINGTON BL	APR 22 1943	LINE "S" NORTHBOUND	SCHEDULE ACTUAL		SAN PEDRO ST AND WASHINGTON BL
W 7TH ST AND FIGUEROA ST.	APR 22 1943	LINE "S" EASTBOUND	SCHEDULE ACTUAL		W 7TH ST AND FIGUEROA ST.

LOS ANGELES RAILWAY CORP.

CHART SHOWING ACTUAL PERFORMANCE
AS COMPARED WITH OPERATING SCHEDULES
ON DATES AND AT LOCATIONS SHOWN



[fols. 460-461]

APP. CASE 4680

EXHIBIT No. 17

Witness: J. G. Hunter.

Date: July 15/1943.

Com. or Ex. ———

CALIFORNIA RAILROAD COMMISSION, TRANSPORTATION DEPARTMENT

REPORT DEALING WITH SERVICE ON MARKET STREET RAILWAY

Case 4680

J. G. Hunter, Assistant Director of Transportation
and Chief Engineer.

San Francisco, July 15, 1943.

[fol. 462]

San Francisco, California.

July 12, 1943.

Case 4680

Conclusions and Recommendations Looking Toward a Betterment in the Service Provided by the Market Street Railway Under War time Conditions, in Connection with the Investigation by the Commission on its Own Motion In Case 4680. To Be Presented at the Hearing in San Francisco, July 15, 1943.

General

These observations are made in the light of prevailing war time conditions with the attending limitations of man power and facilities. If the matter were considered, under what might be termed normal conditions, the entire approach of this study would be materially changed.

The public cannot expect the same standard of service under war time conditions as under normal conditions. It is apparent, the public realizes this situation and accepts it with little criticism in so far as our records show and I think it is prepared to meet an even lower standard of service if war conditions require. On the other hand, it is the obligation of all carriers to exert every reasonable effort to provide the best service within their power with the limited

man power and facilities available. Although this report does not attempt to analyze the rate situation, in the last analysis, service is an important item to consider in justifying a rate structure.

While this investigation is directed to the operations of the Market Street Railway with the objective of providing the public served by that carrier the best transportation that can reasonably be afforded under prevailing conditions, [fol. 463] such service cannot be fully considered without giving recognition to the interlocking effect of the other local street transportation agencies operating in San Francisco, particularly that of the Municipal Railway, not under the Commission's jurisdiction, which now transports approximately the same volume of traffic as does the Market Street Railway. This for the reason the carriers are competitive to a certain extent and the further fact that the rate structures are different for the four local transportation agencies serving San Francisco.

The local transportation problem would be materially simplified if the city were served by one transportation agency under one standard of service and one fare structure which would provide for a universal transfer. If the properties are not brought under one ownership, there should be effected some operating agreement between the Market Street Railway and Municipal System to permit of the greatest use of the available facilities in the interest of the war effort and providing this City the best public transportation service under prevailing conditions.

Conclusions

Based upon the foregoing premises, our study supports the conclusion that *the service on the Market Street Railway, should be improved.* This conclusion is based upon [fol. 464] the record in that the available street cars and

Carrier	Present Base Fare
Jitney Buses	10¢
Market Street Railway	7¢
California Street Cable	6¢
Municipal Railway	5¢

With limited transfer privileges between the rail carriers.

buses are, in many instances and particularly during times of peak travel, overcrowded and the service is irregular. The overcrowded condition is accentuated by the equipment not being operated on schedule.

Our traffic check, as presented by Mr. Hall, shows the cars and buses often operate with an irregular spacing. In other words, there will be long intervals between cars and buses followed by grouping of units. In some cases it may be noted that units are actually operated ahead of schedule.

Service

In developing a service plan for the Market Street Railway the first step is to lay out route operating schedules which are thereafter referred to the local labor representative and with his approval, with respect to conforming with the labor agreement provisions, the schedules are then turned over to the respective Division Superintendents. There are five electric rail divisions, one cable car division and one bus division in the Market Street System. The platform men and women in the division bid on the various runs. Their choice is given preference in accordance with their seniority. It is the duty of the Division Dispatcher to work out a program of operation in conformity with the above program with the available help. At the present time, considerable difficulty is being experienced in filling all the schedules due to man power shortage. Table No. 1 of Exhibit No. 11 shows that during the year ending April 30, 1943, the percentage of motor coaches and street cars which failed to operate in accordance with the schedule requirements, steadily increased from 0 to 5.7 per [fol. 465] cent. In comparing this record with that of the Los Angeles Railway and Municipal System, we find the Municipal operation meets its schedule with few exceptions while the Los Angeles Railway's failures increased from 0.8 per cent to 4.5 per cent. The better record of the Municipal System as compared to that of the Market Street Railway may be explained in part, at least, by the fact the rate of pay is slightly higher and other attractive labor benefits as shown on table VII of Exhibit No. 11.

Each division has a number of inspectors whose duty it is to supervise the operations in the field.

The following tabulation shows certain data as to the Field Inspector's Account for four major street car systems in the state.

Based upon maximum evening peak street car operations

	L.A. Ry.	Key System	Muni.	Mkt.
Scheduled street cars in service	650	162	225	316
Total number Field Inspectors	22	6	7	20
Average number of cars in service per Field Inspector on duty	30	27	32	16
Field Inspectors rate of pay (Per Month)	\$215	\$210-\$225	\$200-\$240	\$180
Hours of service	8 to 9	8	8	8
Overtime	One and one half time over 9 hrs.	None	None	None

The foregoing table shows that of this group of carriers, [fol. 466] Market Street Railway maintains the greater number of inspectors per unit of street cars. However, it should be pointed out that the Market Street operations are rather complicated with respect to maintaining proper spacing of the equipment due to the fact many lines operate over the Market Street tracks with different diverging points. Also, there are many cross-town lines through the business center of the city. This network of tracks through a congested area presents a situation where a tie-up on one line very often seriously interferes with a considerable portion of the company's service. An important part of this service is transportation to the defense industries which requires a concentration of street car and bus units to move the workers at the time of shift changes. The company has been called upon to provide a special service to these industries some times at the expense of the service to the general public and in so far as our records show there are no complaints filed with us as to the service afforded the public in traveling to and from the defense industries.

The results of our tests show that due to serious grouping of cars and buses, further consideration should be given to improving the inspector service.

The results of performance checks presented by Mr. Hall on Charts Nos. I to VI inclusive, Exhibit No. 11, justify the conclusion that the off schedule performance is greater with the Market Street system than is the case with either the Municipal or Los Angeles Railway's operations. This situation can be materially improved by joint action of the [fol. 467] carrier and the city officials of San Francisco and the traveling public. It is within the company's power to improve the service by appropriate schedules and compliance therewith, particularly the spacing of cars and buses.

To improve the man power situation, the Market Street Railway is now spending considerable money in advertising for help by means of the press, radio and bulkhead posters in street cars as well as offering a bonus to its employees who interest men or women in accepting employment with the company.

The company's records show the following expenditures in the interest of attracting new employees to the system.

Newspaper Advertisements	Cost
July 17, 1942 to July 10, 1943 a total of 275 issues appearing in 4 daily San Francisco papers	\$7,500.00
Radio	
May to June, 1943 K.G.O. Blue Network 35 spot announcements	274.00
Bulkhead Posters in Street Cars of the Company	
This form of advertising has been employed continuously during the past year	Nominal Printing of cards only
Employee Bonus Plan	
40 New Employees \$10	400.00
Total	\$8,174.00

[fol. 468] The city can contribute to better service by eliminating unnecessary stops in the business center of the city, particularly along Market Street, which involve rearranging of traffic signals and cross-walks; also, regulate and enforce parking restrictions, particularly double parking. On the other hand, the public can materially assist in arranging to travel, in so far as practical, during off peak travel times.

The service to the city as a whole would be improved if the facilities of the Market Street Railway and Municipal lines were consolidated or at least an operating agreement existed whereby the available facilities of both systems could be used to the best advantage of the city service particularly at this time when there is such an urgent need for transportation service and little available new facilities.

If such an agreement existed the four tracks along Market Street could be used to a greater advantage. Our checks show the following record of cars passing given points on Market Street: Date of check Monday, May 24, 1943.

[fol. 469]

Time	Location & Direction of Travel	Number of Cars	
		Municipal	Market
4:30 to 5:30 p.m.	Outbound west of Sansome Street	115	82
4:30 to 5:30 p.m.	Outbound east of Sansome Street	146	82
7:30 to 8:30 a.m.	Inbound at 6th Street	73	64

(Table IX, Ex. —)

The rates of travel on the two systems were observed to be as follows: Check taken May 24, 1943 between 6th and Sansome Streets on Market Street.

Line	Rate of Travel	
	7:30 to 8:30 a.m.	4:30 to 5:30 p.m.
Market Street Railway	7.77 MPH	6.37 MPH
Municipal Railway	7.36 MPH	5.41 MPH

(Table X, Ex. —)

Two-man Car Ordinance

The City of San Francisco now has in effect an ordinance which prohibits the operations of street cars over city streets with one man.

At one time the Market Street Railway did operate a number of its lines with one-man street cars but was prevented from continuing the practice by the city ordinance. [fol. 470] The Market Street Railway now has 132 cars equipped for one-man or two-man operation. Most of these cars are now in service carrying both a motorman and conductor. During this time of severe manpower shortage the situation would be materially relieved if the company were permitted to operate certain of its lines with one-man cars particularly those which do not operate over the Market Street tracks. With such operation, consideration should be given to maintaining ground loaders at the heavier loading points.

Net Operating Income

Data contained in this record shows that on the average during the 21 year period from 1922 to 1942, inc., the annual

net operating income of the Market Street Railway has amounted to \$878,000. The amount has ranged from a high of \$2,038,000 in 1923 to a loss of \$40,000 in 1938. For the year ending May 31, 1943 the net operating income amounted to \$1,266,000. It can reasonably be assumed that for the duration of the present hostilities and for a reasonable period thereafter the net earnings of this carrier will be materially in excess of the average for the 21 year period referred to above. Coincident with this future high earning period the service to the public will suffer from lack of man power to operate and maintain a sufficient number of cars and buses to meet traffic requirements, use of old equipment and deferred maintenance. Under these [fol. 471] conditions it seems reasonable to require the Market Street Railway to impound some of its net operating income to provide the public with better service in the future. In this way the company will be in a position to pick up deferred maintenance when manpower and materials are available. The plan should also have a material beneficial effect in the way of purchasing new and modern equipment.

Recommendations

1. Market Street Railway should provide better service by improved field supervision, so that when cars or buses get off schedule and operate in close proximity with the resulting long intervals between units, some of them should be turned back even at the expense of discommoding some passengers in the interest of better overall service on the system.
2. Man Power situation on the Market Street Railway could be relieved somewhat during the war emergency period by suspending the two-man car ordinance of the City and County of San Francisco which would permit of running cars with one man under favorable conditions with due consideration to maintaining ground loaders at heavy traffic points. This would also apply to the Municipal operations if they elected to exercise such authority.
3. With the release of man power, additional cars and buses should be placed in service.
- [fol. 472] 4. Operation should be speeded up by increasing the skip-stop program in the city which

would have the effect of improving the over all service at the expense of some additional walking for a limited group of passengers.

5. An operating agreement should be entered into between the Market Street Railway and Municipal system which would permit of the best use of available facilities.
6. The value of the service should be in keeping with the rates.
7. Market Street Railway Company should place in a special fund its gross revenues less the amounts necessary to defray.

Operating expenses—exclusive of depreciation
Taxes
Interest
Sinking fund payments
Equipment notes

Withdrawals from the special fund should be subject to the approval of the Commission.

J. G. Hunter, Assistant Director of Transportation and Chief Engineer.

(Here follows 1 photolithograph, side folio 473)

CALIF.

FL.

SAN FRANCISCO

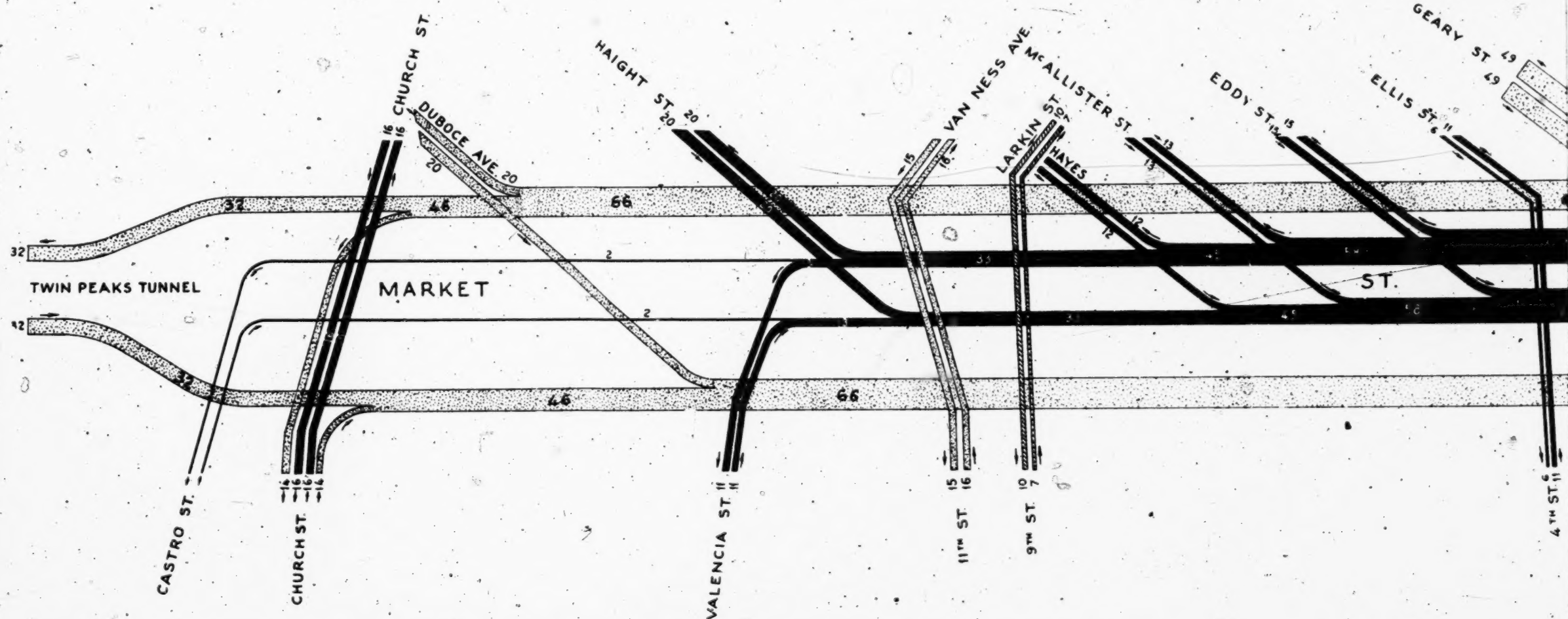
Case 4680
Railroad Commission, California

Hall Exhibit No 18

Filed 9-15-43

H.G. Mathewson, Sec'y

SU



CALIFORNIA RAILROAD COMMISSION

TRANSPORTATION DEPARTMENT

FLOW OF STREET CAR AND BUS TRAFFIC

MARKET ST. SAN FRANCISCO

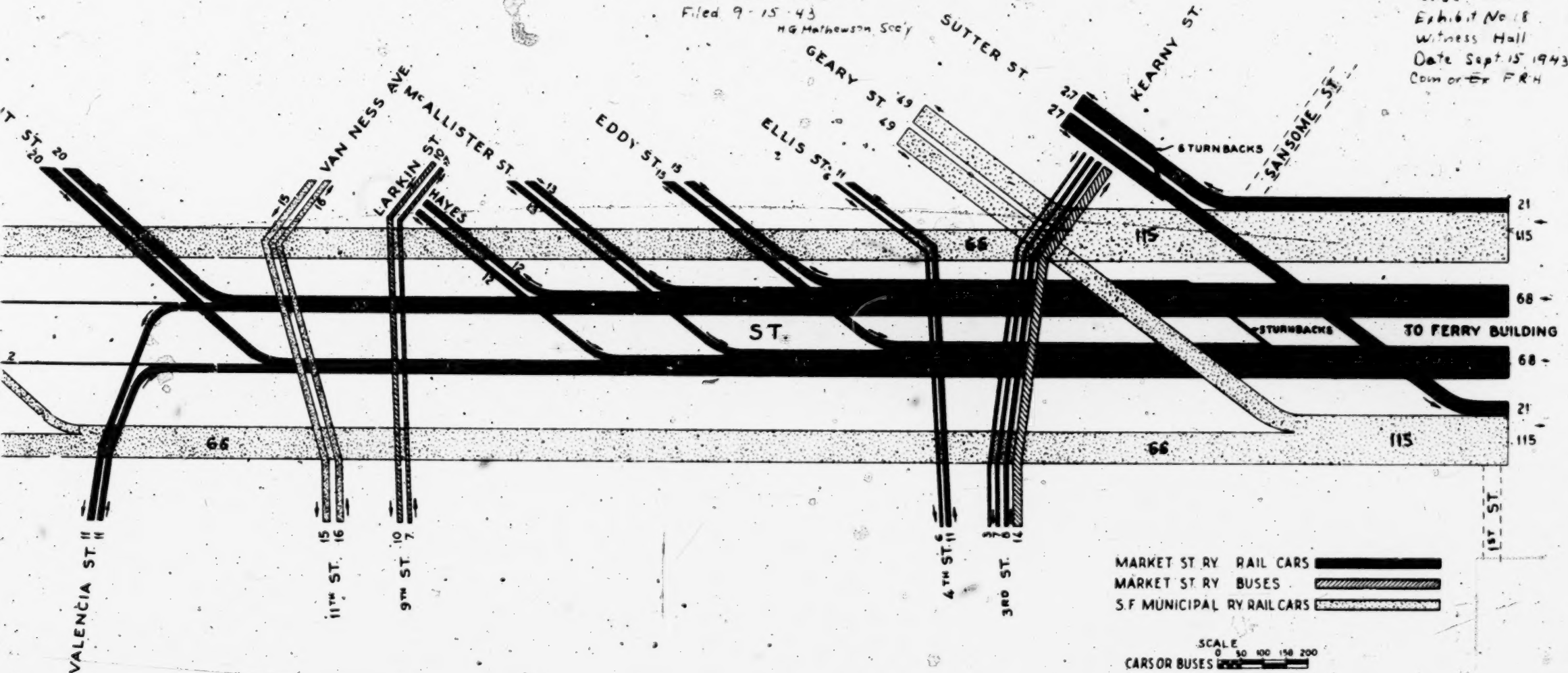
SAN FRANCISCO MUNICIPAL RAILWAY AND MARKET STREET RAILWAY COMPANY

TRAFFIC IN MAXIMUM ONE HOUR PERIOD 4:30 P.M. TO 5:30 P.M.

MAY 24TH, 26TH AND 28TH 1943

Case 4680
Railroad Commission, California
Hall Exhibit No. 18
Filed 9-15-43
H.G. Mathewson, Sec'y

Case 4680
Exhibit No. 18
Witness Hall
Date Sept. 15, 1943
Com. or Ex. FRH



[fol. 474]

Case No. 4680

MARKET STREET RAILWAY COMPANY'S EXHIBIT No. 19

Hunter, Sept. 15, 1943

United States Internal Revenue Stamps Required by Law
Have Been Affixed to Original Counterpart of this Sup-
plemental Indenture on File with Wells Fargo Bank &
Union Trust Co., as Trustee, and Have Been Duly Can-
celled

Supplemental Indenture

MARKET STREET RAILWAY COMPANY

and

WELLS FARGO BANK & UNION TRUST Co., Trustee

Dated April 1, 1940

Relating to First Mortgage 7% Sinking Fund Gold Bonds

[fol. 475] Mortgage of Chattels and Real Property

This Supplemental Indenture, made and entered into as
of the 1st day of April, 1940, by and between Market Street
Railway Company, a California corporation, having its
principal place of business in the City and County of San
Francisco, State of California (hereinafter called the "Com-
pany"), party of the first part, and Wells Fargo Bank &
Union Trust Co., a California corporation, having its
principal place of business in said City and County and
State (hereinafter called "Trustee"), party of the second
part;

Witnesseth:

Whereas, by Indenture of First Mortgage dated April 1,
1924, the Company, as party of the first part therein,
granted, mortgaged and pledged to the Trustee certain
real and other property situated in the State of California,
and more particularly described in said Indenture of First
Mortgage (some of which property has been released from
the lien thereof in accordance with the provisions thereof),
which said Indenture was duly recorded in the office of
the County Recorder of the City and County of San Fran-

cisco in Volume 866 of Official Records at page 12, and in the office of the County Recorder of San Mateo County in Liber 112 of Official Records at page 4, and in the office of the County Recorder of Humboldt County in Book 87 of Mortgages at page 28; and re-recorded in the office of the County Recorder of the City and County of San Francisco in Liber 2848 of Official Records at page 267 (said Indenture of First Mortgage being hereinafter referred to as the "Indenture"), for the purpose of securing an authorized issue of First Mortgage 7% Sinking Fund Gold Bonds, due April 1, 1940; Series A (said Bonds being hereinafter referred to as the "Bonds"); and

Whereas, Bonds in the principal amount of \$15,000,000 were authorized to be issued under said Indenture, of which \$13,000,000 principal amount were issued, and as of the date hereof \$4,618,000 are outstanding; and

Whereas, as of the date hereof, the holders of \$3,942,000 in principal amount of said Bonds, constituting more than 85% of said Bonds outstanding, became parties to and deposited their Bonds under and in accordance with that certain "Plan for Extension of Maturity, Reduction of Interest, and Change of Sinking Fund Provisions of First Mortgage 7% Sinking Fund Gold Bonds, Series A, of Market Street Railway Company, Issued Under Indenture of First Mortgage dated April 1, 1924, to Wells Fargo Bank & Union Trust Co., as Trustee", approved by Decisions numbered 32467 and 32499 of the Railroad Commission of the State of California; and

[fol. 475a] Whereas, said Plan became effective on March 30, 1940, in accordance with the terms thereof;

Now, Therefore, it is agreed by the parties hereto, on behalf of the holders of said Bonds who have and may hereafter become parties to said Plan, that notwithstanding anything to the contrary in said Indenture, said Bonds and said coupons appertaining;

That effective April 1, 1940,—

(1) The maturity date of said Bonds shall be extended to April 1, 1945, and said Bonds shall be payable on April 1, 1945.

(2) That the interest rate upon said Bonds shall be 5% per annum payable quarterly on the first days of January, April, July and October of each year commencing July 1, 1940, and that there shall be attached to each of said

Bonds interest coupons covering such extended maturity authenticated by the facsimile signature of the Treasurer of the Company, each bearing appropriate number, providing for the payment of interest on the corresponding Bond at the rate of 5% per annum, payable quarterly on the first days of January, April, July and October of each year commencing July 1, 1940, substantially in the following form:

"On the first day of —, 19— (unless the Bond hereinafter mentioned shall have been called for previous redemption, and provision made for the payment thereof) Market Street Railway Company will pay to the bearer hereof, upon the surrender hereof, at the option of the bearer hereof, either at the office of Ladenburg, Thalmann & Co., or their successors, fiscal agents of Market Street Railway Company, in the Borough of Manhattan, City of New York, or at the office of the Trustee, City and County of San Francisco, \$—— in lawful money of the United States of America, as provided in the Indenture, as amended, under which said Bond is issued, being the quarterly interest then due on its First Mortgage Sinking Fund Bond, Series A (as modified) number.——.

—— ——— Treasurer".

(3) That Section 29 of Article Four of said Indenture is hereby amended to read as follows:

"Section 29. That the Company covenants and agrees that so long as any Bonds of Series A are outstanding, that commencing July 1, 1940, the Company will pay on the first days of January, April, July and October of each year an amount equal to $\frac{1}{2}$ of 1% of the principal amount of Bonds outstanding as of March 30, 1940, to Ladenburg, Thalmann & Co., or their successors (hereinafter [fol. 476] styled the 'Fiscal Agents') or to the Trustee for their account, in lawful money of the United States of America. The payments thus to be made are hereinafter referred to as 'Sinking Fund Payments', and, together with all other moneys required to be paid into the Sinking Fund by the other provisions of this Indenture, as

amended, shall be applied and used by the Fiscal Agents from time to time in accordance with the provisions of this Article Four. The Sinking Fund Payments and all other moneys required to be paid into the Sinking Fund in accordance with the provisions of this Indenture, as amended, are hereinafter collectively styled 'Sinking Fund Moneys'."

(4) That any and all existing defaults of the Company under the Sinking Fund provisions of Section 33 of Article Four of said Indenture are hereby waived, and the Trustee shall cancel the Bonds outstanding in said Sinking Fund.

(5) Section 33 of Article Four of Said Indenture is amended to read as follows:

"Section 33. That all Bonds and coupons purchased, redeemed or otherwise acquired by or delivered to the Trustee for the Sinking Fund, out of Sinking Fund moneys, paid subsequent to July 1, 1940, pursuant to any provision of this Indenture, as amended, except the special Sinking Fund Bonds, shall be kept alive and uncanceled by the Trustee as long as any Bonds are outstanding, and said Bonds and Coupons shall be stamped 'Not negotiable, property of the Sinking Fund' and the interest thereon shall be collected by the Trustee and paid to the Fiscal Agents and become a part of the Sinking Fund Moneys, and applied as aforesaid. Bonds uncanceled by the Trustee in the Sinking Fund shall not be deemed to be outstanding Bonds under any other provision of this Indenture, as amended."

(6) That the Company may redeem all Bonds or any thereof on any interest payment date at 100% of the principal amount thereof plus accrued interest, in the manner and upon the terms provided in Article Five of the Indenture, except as modified hereunder, upon 30 days' notice published in a daily newspaper of general circulation in the Borough of Manhattan, City of New York, and in a daily newspaper of general circulation in the City and County of San Francisco, California, or notice otherwise given as and upon the terms provided in Article Five of the Indenture.

(7) The Company will not pay any federal tax due on the interest on said Bonds, as extended.

(8) The Trustee will have stamped or endorsed on each Bond a statement substantially as follows:

"The rights of the holder of this Bond are subject to the provisions of a certain Supplemental Indenture dated as of April 1, 1940, between the Company and [fol. 476a] the Trustee on file with the Trustee, which Supplemental Indenture includes a provision for the extension of the maturity of this Bond to April 1, 1945, the reduction of the interest rate to 5% per annum, and the change of the sinking fund provisions thereof."

(9) The Company covenants and agrees not to make any payment on account of principal or interest on its indebtedness to Standard Gas & Electric Company existing on March 30, 1940, until the Bonds shall have been paid in full, and interest on said indebtedness shall accrue at not more than 4% per annum.

(10) The Company covenants and agrees not to make any principal payments on its bank loans existing on March 30, 1940, except after the Bond Sinking Fund payments have been made as they become currently due, and then only to an amount equal to 2% of the principal of said loans annually, except as provided in paragraph (11) hereof.

(11) The Company covenants and agrees that, after meeting Sinking Fund provisions, as above provided, to use its remaining cash only for capital expenditures and working capital, and any amount over and above such reasonable requirements shall be used as an additional sinking fund for the Bonds and bank loans pro-rata to the principal amount of each.

(12) The Company covenants that it will duly and punctually pay the principal of and interest on the Bonds, as extended, on the dates and at the places and in the manner provided in said Bonds, as extended, and in the coupons appertaining, according to the true intent and meaning thereof.

(13) That the Indenture and all the terms, conditions, covenants, promises and agreements thereof and rights

and remedies therein provided, except as modified hereunder, shall be and remain in full force and effect for the benefit of, and shall apply to, the holders of the Bonds, as extended, and coupons appertaining, and in the event the Company shall make a default in any of its agreements hereunder, said default shall be deemed to be included within the appropriate subdivision of the "Events of Default" referred to in Section 47 of Article Seven of the Indenture, and shall constitute an event of default under said Indenture.

(14) It is understood and agreed that the Trustee in executing this Supplemental Indenture only on behalf of the holders of Bonds who have become and may hereafter become parties to the said Plan, and the Trustee makes no representation as to the validity of this Supplemental Indenture or any of its terms or as to whether or not the same shall be binding upon the holders of said Bonds who have not become parties to the Plan.

[fol. 476b] (15) In order to facilitate the recording of this Supplemental Indenture, the same may be executed simultaneously in two or more counterparts, each of which is hereby declared an original, and they together shall constitute one and the same instrument.

In witness whereof, the undersigned have caused these presents to be executed by their officers thereunto duly authorized as of the day and year first above written.

Market Street Railway Company, by Samuel Kahn, President; by E. M. Massey, Secretary; First Party. (Corporate Seal.) Wells Fargo Bank & Union Trust Co., Trustee, by F. J. Brickwedel, Vice President, by Grover Grady, Trust Officer; Second Party. (Corporate Seal.)

[fol. 476c] STATE OF CALIFORNIA.

City and County of San Francisco, ss:

On this 10th day of April, in the year 1940, before me, Nancy Everett, a Notary Public in and for said City and County, and State, personally appeared Samuel Kahn, known to me to be the President, and E. M. Massey, known to me to be the Secretary, of Market Street Railway Company, a California corporation, the corporation that executed the within instrument, and known to me to be the persons who

executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Nancy Everett, Notary Public, in and for the City and County of San Francisco, State of California.
My Commission Expires July 27, 1942. (Notarial Seal.)

[fol. 477] STATE OF CALIFORNIA.

City and County of San Francisco, ss:

On this 10th day of April, in the year 1940, before me, Nina C. Putnam, a Notary Public in and for said City and County, and State, personally appeared F. J. Brickwedel, known to me to be the Vice President, and Grover Grady, known to me to be the Trust Officer of Wells Fargo Bank & Union Trust Co., a California corporation, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the same, as trustee.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Nina C. Putnam, Notary Public, in and for the City and County of San Francisco, State of California.
My Commission Expires April 1, 1943. (Notarial Seal.)

Recording Data

Recorded in the office of the Recorder of the City and County of San Francisco on April 12, 1940, in Book No. 3599 of Official Records at Page 1.

Recorded in the office of the Recorder of the County of San Mateo on April 12, 1940, in Book No. 885 of Official Records at Page 444.

Recorded in the office of the Recorder of Humboldt County on April 12, 1940, in Book 107 of Mortgages at Page 90.

[fol. 478] CASE 4680 KAHN EXHIBIT No. 20 Filed 9-15-43

Changes Proposed by Division 1004, A. A. of S. E. R. and M. C. E. of A. In the Agreement with Market Street Railway Company.

A

Section 1 of the current agreement shall be changed by amending the third paragraph thereof to read as follows:

The Company shall choose one arbitrator and the Association shall choose one arbitrator and the two arbitrators thus chosen shall select a third arbitrator who shall act as Chairman of the Board. Should the two arbitrators be unable to agree on a third arbitrator within ten (10) days, he shall be appointed by the Conciliation Service of the United States Department of Labor. The decision of a majority of the Board presented in writing to the Company and the Association shall be final and binding upon both parties to this Agreement.

[fol. 479]

B

Section 2 (a) shall be amended to read as follows:

All platform men assigned to regular runs shall be compensated for at least eight (8) hours plus allowances for each day worked. Runs are to be completed within the ratio defined by Clause (c). Six (6) days shall constitute a week's work and all platform men assigned to regular runs shall be guaranteed five (5) days work at straight time and a sixth day work at overtime each week.

[fol. 480]

C

Section 2 (b) shall be amended to read as follows:

Overtime at the rate of time and one-half shall be paid for all work in excess of eight (8) hours per day, for all work performed in excess of a spread of ten (10) hours per day, and for all work in excess of forty (40) hours per week. If an employee is required to work in addition to his regular run he shall be paid overtime for work at the rate of time and one-half.

If an employee upon completion of his regular day's work is called upon to take out a regular schedule run, or portion thereof, he shall be paid overtime for this ad-

ditional work at the rate of time and one-half. Overtime will be paid from the completion of his regular day's work to completion of additional work.

The above applies to cases where relief is made on the road as well as where cars or coaches are turned in to the barn.

Should an employee be called upon, upon completion of his regular day's work, to take out a tripper he shall be paid at overtime rate with a minimum of four (4) hours time allowed.

[fol. 481]

D

Section 2 (c) shall be amended to read as follows:

Forty-five per cent (45%) of all runs shall be straight runs. The remaining fifty-five per cent (55%) must not have more than one break and be completed within ten (10) hours.

The above ratios shall be applied separately to each division each day.

As many runs as the service permits shall be day runs. A day run is defined as a run completed by 6:30 p. m.

Any part of a regular run consuming less than two hours' time shall be paid a minimum of two hours.

All trippers shall be paid a minimum of four (4) hours straight time. Tripper is defined as one continuous piece of work.

No extra man shall be allowed to work more than one tripper each week.

The representatives of the Association shall be permitted to examine all time-tables and, along with the Company's representative, shall make out the time-tables. The Association representatives shall be permitted to make suggestions for standardization of running time, which shall be applied subject to the approval of the Company.

All time-tables shall show a summary of lapsed time of runs.

[fol. 482]

E

Section 2 (e) shall be amended to read as follows:

Effective June 1, 1943, the hourly rate of pay for electric car motormen and conductors shall be * * * \$1.00 per

hour and the hourly rate of pay for trolley coach operators, bus operators and cable car platform men shall be \$.1.10 per hour.

There shall be no lay-offs of platform men because of additions to bus and trolley coach operations.

Motormen, conductors, gripmen and operators breaking in students shall receive twenty-five cents (25¢) per hour extra while so engaged. Qualified men riding on line to become acquainted with the same are not to be considered as breaking in, but the instructor shall receive twenty-five cents (25¢) per hour extra on the San Mateo line in such case.

Bus operators' and chauffeurs' licenses shall be furnished and paid for by the Company.

[fol. 483]

F

Section 2 (f) shall be amended to read as follows:

All platform men shall be allowed ten (10) minutes and all bus operators shall be allowed fifteen (15) minutes before starting work, in order that they may get the car or bus in readiness. Motormen, gripmen and operators shall be allowed five (5) minutes for putting up the car or bus at night, if relief from duty is not made at the entrance.

[fol. 484]

G

Section 2 (g) shall be amended to read as follows:

Conductors and operators shall be allowed fifteen (15) minutes for making up the day's work and turning it in. Conductors and operators required to make relief on the street shall be allowed five (5) minutes for preparing outfit.

[fol. 485]

H

Section 2 (1) shall be amended by changing the fifth paragraph thereof to read as follows:

All employees breaking in and receiving instructions on electric car, bus, trolley coach or cable car shall receive the platform rate of pay during such breaking in period. Regular men having no assigned runs on days that special schedules are used shall be assigned to work in the inverse order of seniority when so qualified and shall be paid at

the rate of time and one-half for time so worked with a minimum of four (4) hours at such overtime rate.

[fol. 486]

I

Section 2 (s) shall be amended to read as follows:

The Company shall furnish all uniforms required.

[fol. 487]

J

Section 2 (z) shall be amended to read as follows:

Assistants to operate the turn-table at Powell and Market Street shall be provided at all times between the hours of 8:00 a. m. and 11:00 p. m.

[fol. 488]

K

Section 3-A (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on Saturday. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

The work week for the watchmen shall be six (6) days, forty-eight (48) hours, and all work in excess of eight (8) hours per day and forty-eight (48) hours per week shall be considered overtime and paid at the rate of time and one-half.

[fol. 489]

L

Section 3-B (b) shall be changed to read as follows:

All employees in the Bus and Truck Garages, Car House Maintenance Department and Cable Machinery Department shall be guaranteed six (6) days, forty-eight (48) hours work each week, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operation so that as many employees as possible may be given full employment throughout the year.

[fol. 490]

M

Section 3-C (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol. 491]

N

Section 3-D (k) shall be changed to read as follows:

Turk Street substation and Bryant Street substation shall have an Assistant Operator on day and afternoon shifts.

Section 3-D (o) shall be eliminated from the Agreement.

[fol. 492]

O

Section 3-E (h) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol. 493]

P

Section 3-F (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol: 494]

Q

Section 3-H shall be changed to read as follows:

The following rates of pay shall be paid to all General Shop and Carhouse Employees, Cable Machinery Men, Trackmen and Linemen:

Elkton-Market-Valencia Shops

Effective June 1, 1943

Armature Department

	1st 6 mos.	2nd 6 mos.	There- after
Armature Winder.....	\$1.27 $\frac{1}{2}$	\$1.32 $\frac{1}{2}$	\$1.37 $\frac{1}{2}$
Armature Repairman.....	1.27 $\frac{1}{2}$	1.32 $\frac{1}{2}$	1.37 $\frac{1}{2}$
Liner Fitter.....	1.05	1.10	1.15
Armature Turner.....	1.05	1.10	1.15
Field & Brush Repairman.....	1.05	1.10	1.15
Bander.....	1.05	1.10	1.15
Sander.....	.85	.90	.95
Stripper.....	1.05	1.10	1.15
Material Repairman.....	1.05	1.10	1.15
Electrician.....	1.60	1.65	1.70

Car Building Department

Assistant Foreman—\$13.60 per day

Pattern Maker.....	1.60	1.65	1.70
Glass Repairman.....	1.40	1.45	1.50
Car. Builder.....	1.40	1.45	1.50
Carpenter.....	1.40	1.45	1.50
Mechanic.....	1.40	1.45	1.50
Mill Hand.....	1.40	1.45	1.50
Leather Worker.....	.97	1.02	1.07
Seat Repairman.....	1.40	1.45	1.50

Storekeeper—\$195 a month

Sweeper—\$170 a month

Blacksmith Department

Blacksmith Forger.....	1.35	1.40	1.45
Blacksmith.....	1.35	1.40	1.45
Blacksmith's Helper.....	.90	.95	1.00

[fol. 495]

Machine shop

Assistant Foreman—\$13.60 per day

Fare Box Repairman.....	\$1.05	\$1.10	\$1.15
Compressor Repairman.....	1.05	1.10	1.15
Machinist.....	1.29	1.34	1.39
Bench Hand.....	1.29	1.34	1.39
Armature Liner Operator.....	1.05	1.10	1.15
Liner Operator.....	1.05	1.10	1.15
Drill Press Operator.....	1.05	1.10	1.15
Radial Press Operator.....	1.05	1.10	1.15
Machine Shop Helper—\$170.00 per mo.			
Bolt Threader.....	1.05	1.10	1.15
Axle Cutter Buffer.....	1.05	1.10	1.15

Overhauling Department

	1st 6 mos.	2nd 6 mos.	There- after
Assistant Foreman—\$9.70 per day			
Pipe Fitter	1.05	1.10	1.15
Sheet Metal Man	1.40	1.45	1.50
Airman	1.05	1.10	1.15
Motorman	1.05		
Drill Press Operator	1.05	1.10	1.15
Babbitter, Center Plates, Punch and Shears	1.05	1.10	1.15
Oiler	1.05	1.10	1.15
Fender Repairman	1.05	1.10	1.15
Truck Repairman	1.05	1.10	1.15
Motor Repairman	1.05	1.10	1.15
Crane Operator	1.05	1.10	1.15
Cleaning Plant Operator	1.05	1.10	1.15
Storekeeper—\$195 a month			
Trolleyman	1.00		

Welding Department

Electric Welder	1.11½	1.16½	1.21½
Acetylene Welder & Burner	1.11½	1.16½	1.21½
Acetylene Welder	1.11½	1.16½	1.21½
Combination Electric Arc, Acetylene Welder and Burner	1.11½	1.16½	1.21½
Electric Welder, Grinder	1.11½	1.16½	1.21½
Acetylene Burner, Welder	1.11½	1.16½	1.21½

[fol. 496]

Wheel Room

Machinists	\$1.29	\$1.34	\$1.39
Wheel Shop Helper	.95	1.00	1.05

Moulding Room

Head Moulder	1.16	1.21	1.26
Moulder	1.16	1.21	1.26

Car Wiring Department

Assistant Foreman—\$9.70 per day			
Controllerman	1.05	1.10	1.15
Car Wireman	1.05	1.10	1.15
Electric Bench	1.05	1.10	1.15

Paint Shop

Assistant Foreman—\$13.60 per day			
Sprayman	1.40	1.45	1.50
Letterer	1.40	1.45	1.50
Brush Hand & Burner	1.40	1.45	1.50
Brush & Putty Hand	1.40	1.45	1.50
Car Cleaner—\$170 a month			

Special Track Building Department

Special Track Builder	1.15	1.20	1.25
Punch and Shear	1.05	1.10	1.15

Miscellaneous

Watchman—\$170 a month

Purchasing & General Storeroom

Automotive Storekeeper—\$230 per month
 General Storekeeper—\$230 per month
 Assistant Storekeeper—\$175 per month
 Laborers—95¢ per hour
 Watchmen—\$170 per month

ol. 497]

Carhouses

Employees of the Carhouses shall be classified as Repairmen, Car Cleaners and Watchmen.

The Repairmen group shall be reclassified according to their principal duties, namely:

Oilers	Controllermen
Air Men	Trouble Shooters
Carpenters	Blacksmiths
Bus Mechanics	Trackless Trolley
Brakemen	Repairmen
Combination Outside	Repairmen General
Shopman and Truck	(night shift)
Driver	Fender Repairmen
Floorman	

It is understood and agreed that any of the employees classified as above outlined shall do any and all classes of repair work when called upon so to do by their immediate superior.

It is understood and agreed that at any time when the principal duties of an employee are changed, his classification as above outlined may likewise be changed.

No carhouse employee shall be forced to transfer from night work to day work, unless the company's methods of handling carhouse maintenance are changed by eliminating entirely maintenance work at night, wrecking service excluded.

Assistant Foreman, Day	\$9.70 per day
Night Foreman	9.70 " "
Garage Foreman	13.24 " "
Assistant Garage Foreman	11.62 " "

	1st Year	2nd Year	There- after
Oilers	\$1.05	\$1.10	\$1.15
Controllerman	1.05	1.10	1.15
Repairmen	1.05	1.10	1.15
Trouble Shooters	1.05	1.10	1.15

[fol. 498]

Carpenters.....	1.40	1.45	1.50
Blacksmiths.....	1.35	1.40	1.45
Brakemen.....	1.05	1.10	1.15
Trackless Trolley Repairmen.....	1.05	1.10	1.15
Combination Outside Shopman and Truck Driver.....	1.05	1.10	1.15
Fender Repairman.....	1.05	1.10	1.15
Repairman General (night shift).....	1.05	1.10	1.15
Floormen.....	1.05	1.10	1.15
Car Cleaners—\$170 per mo.			
Car House Janitors—\$170 per mo.			
	1st Year	2nd Year	3rd Year
Auto or Bus Mechanics.....	\$.95	\$1.10	\$1.25
Washer on Auto or Bus Engines & Parts—.85 per hr.			
Watchmen—\$170 per mo.			\$1.39

Cable Machinery Department

	Per Hr.
Channel Man.....	\$1.15
Channel Man's Helper.....	1.00
Grip Repairman.....	1.15
Grip Repairman's Helper.....	1.00
Repairman.....	1.15
Repairman's Helper.....	1.00
Machinist Head.....	1.39
Machinist.....	1.39
Oiler.....	1.15
Pulley Man.....	1.15
Pulley Man's Helper.....	1.00
Ropeman.....	1.39
Ropeman, 2nd class.....	1.05
Ropeman's Helper.....	1.05
Operator.....	\$226.54 per mo.
Operator Helper.....	226.54 per mo.

[fol. 499]

Overhead Lines Department

	1st 6 mos.	2nd 6 mos.	There- after
Leadman.....	\$1.47½	\$1.52½	\$1.57½
Lineman.....	1.47½	1.52½	1.57½
Lineman Truck Driver.....	1.47½	1.52½	1.57½
Shopman.....	1.47½	1.52½	1.57½

Substation Operators

Chief Operators

Turk-Bryant-Downtown.....	\$259.54 per mo.
Geneva-Eighth Ave.....	251.94 per mo.
Millbrae.....	237.34 per mo.

Operators

Turk-Bryant-Downtown.....	\$251.94 per mo.
Geneva-Eighth Ave.....	238.44 per mo.
Millbrae.....	227.64 per mo.

Relief Operators

Turk-Bryant.....	\$251.94 per mo.
Downtown-Eighth Ave.....	251.94 per mo.
Geneva-Millbrae.....	238.44 per mo.

Assistant Operators	
All Substations	\$226.54 per mo.
Engineering Department	
	Per Hr.
Trackmen	\$.95
Laborers .....	.95
Combination Concrete Cutter-Truck Driver	1.00
Concrete Cutters	1.00
Pavers	1.25
Paving Laborers .....	.95
Trolleyman	1.00
Derrick Operators .....	.95
Motormen	1.05
Powderman in charge of Quarry .....	.95
Head Quarryman .....	.95
[fol. 500]	
Asst. Head Quarryman .....	.95
Quarryman .....	.95
Cable Utility Men .....	.95
Electric Welders	1.01½
Track Grinders	1.01½
Burner	1.01½
Utility Man .....	.95
Storekeeper	175.00 per mo.
Switch repairman	1.01½
Combination Switch Repairman-Truck Driver	1.01½
Track Walker .....	.95
Watchman	170.00 per mo.
Slot Inspector .....	.95
Bonder	1.01½
Combination Bonder Helper-Truck Driver	1.01½
Oilers .....	.95
Thermit Welders	1.16
Thermit Welder Moulder	1.16
Flagmen .....	.95
Guard on Money Truck	1.01½
Driver on Money Truck	1.01½

[fol. 501] R

Section 3-I shall be eliminated.

[fol. 502] S

Section 4 (i) shall be changed by adding the following:

All employees shall be allowed eight (8) hours rest after completing a day's work, or shall be paid at the rate of time and one-half for all time worked prior to lapse of eight (8) hours.

[fol. 503] T

Section 4 shall be changed so that Subsection (m) shall read as follows:

Any employee in the service of the Company for a period of twelve (12) months shall receive two (2) weeks vacation

with twelve (12) days pay, except monthly rated employees who shall receive two (2) weeks vacation with one-half ($\frac{1}{2}$) months pay. Vacation period shall be from January 1 to December 31. Seniority shall prevail in the selection of vacation periods.

[fol. 504]

U

Section 4 shall be further amended to eliminate subsection (n) thereof and to substitute therefor the following new subsection (n):

Vacation Rules:

1. The present block system governing vacations for platform men and bus operators shall be maintained.

2. Platform men and bus operators shall select vacations according to seniority immediately after the general sign-up is completed and runs are posted.

3. During the year at any further general sign-up all platform men and bus operators who have not taken vacations shall re-sign for same.

4. All miscellaneous employees shall select vacations according to seniority during the month of December of each year for vacations during the following year.

5. All employees shall receive full vacation pay at the time their vacation starts. Vacation pay shall be based upon an eight (8) hour day at employee's regular rate of pay.

6. The length of service attained at the time an employee starts his vacation shall determine the vacation rights to which such employee is entitled.

7. Employees laid off, resigning, discharged, drafted or leaving the Company to join the military service, or leaving on sick leave, shall receive pay for vacation due them in addition to pro-rata pay for vacation earned in the current year.

[fol. 505]

V

A new Section 5 shall be incorporated in the Agreement, reading as follows:

Instruction on Coach Operation:

1. All jobs as instructors in coach training provided for below, and as instructors in breaking in students as coach operators shall be open for bid by posting notices advising employees of said positions. Ability being sufficient, seniority shall govern selection of men for these jobs.

2. All students in coach operation shall be obliged to undertake a course of instruction in the shops of the company to learn the mechanical operations of the bus. Such course to be mutually agreed upon by the parties hereto.

3. After completion of the shop course students shall be entitled to not less than 30 hours of driving instruction before taking final driving test. At any time during the 30-hour period should the student's instructor recommend that he be given the final driving test he shall have the opportunity to do so. Should the Chief Instructor in such case find that the student is not fully qualified he shall be given the remaining hours of instruction to which he is entitled.

4. A standard final test shall be prescribed by the company. Such standard test shall be given to all students alike.

5. In taking a final driving test if a student's instructor advises that the test be given on a different coach the Chief Instructor shall make substitution of coach to the satisfaction of the instructor.

[fol. 506]

W

A new Section 6 shall be incorporated in the Agreement, reading as follows:

After one year's service with the Company all employees shall be entitled to twelve (12) days sick leave with pay each calendar year. Such sick leave shall be cumulative from year to year.

X

[fol. 507] Section 5 of the present Agreement shall be eliminated and a new Section 6 shall be incorporated, reading as follows:

This agreement shall become effective on the 1st day of June, 1943, and shall remain in effect until the 31st day of May, 1944, and thereafter until changed on thirty (30) day's notice, which may be served in writing by either party on the other on or after the 1st of May, 1944; in case one party serves notice on the other, the parties shall negotiate for thirty (30) days. In case the parties cannot reach an agreement at the end of thirty (30) days (unless this period is extended by mutual consent), all questions in dispute shall be submitted to a Board of Arbitration, whose decisions shall be final and binding on both parties.

In the event that the national wage policy is changed by the Congress, the President, the War Labor Board, the Director of Economic Stabilization, or other appropriate governmental agencies, either party hereto may upon thirty (30) day's written notice request changes in the wage rates provided herein to take effect thirty (30) days after such notice is served.

[fol. 508] CASE 4680—KAHN EXHIBIT No. 21

Filed 9-15-43

BEFORE THE RAILROAD-COMMISSION

Case No. 4680

MARKET STREET RAILWAY COMPANY'S EXHIBIT No. 21

Expansion of Service Rendered by the Municipal Railway
of San Francisco

Car and Coach Hours

Fiscal Year.	Hours
1942-41	1,083,008
1941-40	1,064,439
1940-39	1,049,720
1939-38	1,003,126
1938-37	919,678

The above data was taken from the Annual Report of the Public Utilities Commission.

Car hours operated increased 163,330 or 18% during the fiscal year of 1941-42 as compared with 1937-38.

Herewith is shown the major extensions and changes of service from July 28, 1935 to date. Where such extensions or changes affected the Market Street Railway Company, comment is made indicating the line or lines affected. [fol. 509] July 28, 1935, Bus Route No. 6 commenced operation. Eureka Valley Station (Twin Peaks Tunnel to Diamond and Clipper Streets.

Market Street Railway Company lines affected: Route No. 8, Route No. 11 and Route No. 33.

September 15, 1937 Line "L" extension to Fleishhacker Pool commenced operation.

Market Street Railway Company line affected: Route No. 12.

January 1, 1938 Bus Route No. 5 Marina Route changed from Divisadero to Broderick Street.

Market Street Railway Company line affected: Route No. 22.

May 8, 1938 Bus Route No. 6 South Terminal changed to Diamond and Duncan Streets.

Market Street Railway Company lines affected: Route No. 8, Route No. 11 and Route No. 33.

January 15, 1939 Bay Bridge trains started operation to Bridge Terminal. Alternate Municipal Railway cars operated over Bay Bridge Terminal Loop.

June 25, 1939 Bus Route No. 6 rerouted over Castro, 19th, Eureka, 23rd, Diamond, Clipper, Church, 25th, Collingwood, and Market Streets.

Market Street Railway Company lines affected: Routes No. 8, 11 and Castro Cable.

July 9, 1939 Bus Route No. 8 commenced operation from Judah Street and 17th Avenue to Taraval Street and 15th Avenue.

Market Street Railway Company line affected: Route No. 17.

July 23, 1939 Bus Route No. 7 commenced operation from Forest Hill Station to Rio Court.

Market Street Railway Company line affected: Route No. 10

[fol. 510] July 30, 1939 Bus Route No. 11 commenced operation from Union and Powell Streets to Coit Tower, Telegraph Hill.

August 6, 1939 Bus Route No. 9 commenced operation from Potrero Avenue and Army Street to Bacon and Somerset Streets.

Market Street Railway Company lines affected: Routes No. 25 and Silver Avenue Coach.

August 6, 1939 Bus Route No. 10 commenced operation from Balboa Terrace to San Jose and Plymouth Avenues.

Market Street Railway Company lines affected: Routes No. 12 and 26.

August 6, 1933 Car Line "M" discontinued and replaced by Bus Route No. 10.

Market Street Railway Company lines affected: Routes No. 12 and 26.

August 24, 1939 Bus Route No. 10 Northern Terminal extended from Balboa Terrace to St. Francis Circle.

Market Street Railway Company lines affected: Routes No. 12 and 26.

October 14, 1939 Bus Route No. 6 Southern Terminal extended to South Van Ness Avenue and 23rd Street.

Market Street Railway Company lines affected: Routes No. 8, 11, 33, 24, 10, 9, 12 and 14.

October 15, 1939 Bus Route No. 10 Southern Terminal extended to Sickles Avenue and Mission Street.

Market Street Railway Company lines affected: Routes No. 12, 26 and 14.

October 30, 1939 Bus Route No. 9 Southern Terminal extended to San Bruno Avenue and Ware Street.

Market Street Railway Company lines affected: Route No. 25 and Silver Avenue Motor Coach.

December 27, 1939 Five new modern streamlined passenger cars were placed in service.

Market Street Railway Company lines affected: All routes influenced by additional cars in service.

July 2, 1940 Bus Route No. 12 commenced operation from Beale and Howard Streets to Army Street and South Van Ness Avenue.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

[fol. 511] July 7, 1940 Bus Route No. 12 Eastern Terminal extended from Beale and Howard to Market Street and the Embarcadero.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

November 18, 1940 Bus Route No. 1 extended to San Francisco Junior College on school days.

Market Street Railway Company lines affected: Routes No. 10 and 12.

January 1, 1941 Lines "B", "D", "K" and "N" Eastern Terminal changed to Bridge Terminal and Lines "C", "J" and "L" Eastern Terminal changed to Ferry Terminal from alternate cars of each line to Bridge and Ferry Terminal.

March 23, 1941 Bus Route No. 2 commenced operation from Twenty-Second Avenue and Irving Street to Thirty-Fifth Avenue and Noriega Street.

Market Street Railway Company line affected: Route No. 17.

March 23, 1941 Bus Route No. 3 commenced operation from Thirtieth and Church Street to Sickles and Huron Avenues.

Market Street Railway Company line affected: Route No. 14.

March 23, 1941 Bus Route No. 8 discontinued.

Market Street Railway Company line affected: Route No. 17 improved.

March 23, 1941 Bus Route No. 10 Northern Terminal extended from St. Francis Circle to 19th Avenue and Irving Street.

Market Street Railway Company lines affected: Routes No. 12, 26, 17 and 7.

April 6, 1941 Bus Route No. 14 commenced operation from Noe Street and Duboce Avenue to Haight and Belvedere Streets.

Market Street Railway Company lines affected: Routes No. 6, 7 and 17.

May 5, 1941 Bus Route No. 3 changed from Church Street, Day Street and Dolores Street to 30th Street, Sanchez Street and Randall Street.

Market Street Railway Company lines affected: Route No. 14.

May 19, 1941 Bus Route No. 14 Eastern Terminal changed from Noe Street and Duboce Avenue to Church and Market Streets.

Market Street Railway Company lines affected: Routes 6, 7, 17 and 22.

[fol. 512] June 8, 1941 Bus Route No. 7 Southern Terminal changed from Rio Court to Teresita Boulevard and Melrose Avenue.

Market Street Railway Company line affected: Route No. 10.

September 7, 1941 Line "R" commenced operation with trolley coaches from Army Street and South Van Ness Avenue to Beale and Howard Streets.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

September 7, 1941 Bus Route No. 12 discontinued between Army and Beale Streets.

Market Street Railway Company lines affected: See Item No. 30—Substitution.

September 8, 1941 Bus Route No. 12 operated as a shuttle service from Line "R" between Beale and Howard Streets and Market Street and the Embarcadero.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

September 29, 1941 Bus Route No. 14 changed between 17th and Ashbury Streets and Cole and Carl Streets.

Market Street Railway Company lines affected: Routes No. 6, 7, 17 and 22.

December 8, 1941 Bus Route No. 10 extended to 25th Avenue and California Street.

Market Street Railway Company lines affected: Routes No. 12, 26, 7, 17, 5, 1 and 2.

January 4, 1942 Bus Route No. 10 consolidated with Bus Route No. 3 and Bus Route No. 10 discontinued.

Market Street Railway Company lines affected: Routes No. 14, 12, 26, 7 and 17.

January 4, 1942. Bus Route No. 12 (Shuttle) discontinued.

April 12, 1942 Bus Route No. 3 extended to Sea Cliff Avenue.

Market Street Railway Company lines affected: Routes No. 14, 12, 26, 17, 5, 1 and 2.

[fol. 513] CASE 4680 TO KAHN EXHIBIT No. 22

Filed 9-15-43

MARKET STREET RAILWAY COMPANY, SAN FRANCISCO,
CALIFORNIA

[fol. 514] A study to determine the net income of the Company for the first six months of calendar years 1937, 1938 and 1939 if a 5¢ fare with free transfers had been in effect.

[fol. 515] During the years 1937 and 1938 the Company made applications to the Railroad Commission for permission to increase its fares from 5 cents to 7 cents with four tokens for 25 cents and subsequently for a straight 7 cent fare. In seeking these increases the Company was fully aware and so testified that its patronage would decline but that its net earnings would increase sufficiently to permit the Company to meet its current obligations thereby preserving its solvency. Again in seeking these increases the Company was not asking for a reasonable rate of return as it realized that its "right to earn" was not compatible with its "ability to earn" under prevailing conditions.

If the Company had not sought and the Commission had not granted the increase in fares to 7 cents it could not have met its current obligations and bankruptcy would have ensued. To prove this statement the Company has prepared a table attached hereto which gives the estimated income for the first six months of the calendar years 1937, 1938 and 1939 on the basis of a 5 cent fare with free transfer and an actual income for those periods at the fare which it was permitted to charge. These six months periods were selected for the reason a 5 cent fare with free transfer was [fol. 516] in effect for the first six months of 1937; a 5 cent fare with a 2 cent transfer charge was in effect for the first five months of 1938; and a 7 cent fare with free transfer was in effect for the first six months of 1939.

The Exhibit indicates for the first six months of 1938 that the Company's net income before depreciation would have been \$12,704.04 as against an actual income before depreciation of \$48,442.36. In other words, for this six months

period of 1938 it would appear that the Company would have been better off had it continued to charge 5 cents with a free transfer instead of 5 cents with a 2 cent transfer charge; however, it must be borne in mind that the Company did not apply to this Commission for a 5 cent fare with a 2 cent charge for a transfer nor was there anything in the record from any source to justify such fare structure. Prior to making the application to the Commission for an increase in fares, the Company gave consideration to preservation of the 5 cent fare with a charge for transfers and discarded it when it realized that its position would not be improved under such a structure but quite to the contrary would become worse.

We next approach the period embracing the first six months of 1939 when the Company was authorized to charge a 7 cent fare with free transfer and during this period we find that the estimated net income before depreciation had a 5 cent fare been in effect would have been \$109,728.04 as against an actual income before depreciation of \$115,140.94 [fol. 517] thereby bettering the Company's position for that period by the sum of \$224,868.98 which enabled the Company to preserve its solvency.

[fol. 518] Description of Method Used in Analyzing Condition that Would Have Prevailed Had the Fare Structure Remained at 5 Cents

This statement covers the first six months of years 1937, 1938 and 1939.

The starting point used is the actual Revenue Car Hours operated for the first six months of 1937 and is assumed to represent 100% or 1,072,447 Revenue Car Hours (all of which was operated at a 5¢ fare). This figure is then adjusted to the business trend in San Francisco as compiled by the Research Department of the San Francisco Chamber of Commerce on a percentage basis minus or plus as compared with the previous year six month period.

Column No. 2—represents the Estimated Passenger Revenue based on the actual Passenger Revenue per Revenue Car Hour of \$3.3070 which prevailed during the first six months of 1937 under a 5¢ fare. This figure of \$3.3070 is then applied to the Car Hours in Col. No. 1 which gives us the estimated Passenger Revenue shown in Col. No. 2.

Column No. 3—represents Operating Expenses based on the Revenue Car Hours given in Col. No. 1 times the actual Operating Expense per Revenue Car Hour for the various periods shown.

Column No. 4—is Column No. 2 less Column No. 3, giving us the Estimated Passenger Revenue less Operating Expense.

[fol. 519] Column No. 5—represents actual other income taken from Operating Reports—Comparative Statement of Income.

Column No. 6—represents actual Tax Railway Operations taken from Operating Reports—Comparative Statement of Income.

Column No. 7—represents balance after Taxes.

Column No. 8—represents Total Income Deductions taken from Operating Reports—Comparative Statement of Income.

Column No. 9—represents Estimated Net Income before depreciation. Column No. 10—represents Actual Net Income before depreciation, taken from Operating Reports.

[fol. 520] San Francisco Chamber of Commerce

Business Activity

	1937 Index	1938 Index	1939 Index
January	108.0	96.3	97.5
February	101.9	85.8	89.0
March	112.9	98.6	101.7
April	108.8	92.7	96.2
May	102.4	87.8	92.7
June	101.4	91.0	96.9
Total	635.4	552.2	574.0
Change from previous year		13.2% Minus	4.0% Plus

(Here follows 1 paster, side folio 521)

314A

[fol. 521]

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	*C. of C. Trend using 1st 6 Mos. C. H. for '37 as 100%	Estimated Pass Revenue Based on '37 6 Mos. Revenue per C.H.	Total Operating Expense Based on Actual Cost per C. H. for various years	Estimated Pass Revenue Less Operat- ing Expense	Other Income Actual	Tax Railway Operation Actual	Estimated Balance After Taxes	Total Income Deductions Actual	Estimated Net Income Before Depreciation	Actual Net Income Before Depreciation
1st 6 Mos. 1937	1,072,447 100% Actual	\$ 3,3070	\$	\$	\$	\$	\$	\$	\$	\$
1st 6 Mos. 1938	930,884 13.2% minus =141,563	3,078,433.39	2,634,536.88 Col. 1 x \$2.8301452	443,896.51	5,389.75	228,000.00	221,286.26	233,990.30	12,704.04*	48,442.36*
1st 6 Mos. 1939	968,119 4.0% Plus =37,235	3,201,569.53	2,874,446.58 Col. 1 x \$2.9691046	327,122.95	3,816.69	212,000.00	118,939.64	228,667.63	109,728.04*	115,140.94

* San Francisco Chamber of Commerce Index of Business Activity.

* Red Figures.

[fol. 522]

CASE 4680 EXHIBIT No. 23

Witness Cahill

Date Sept. 15, 1943

Public Utilities Commission Municipal Railway

	Motormen	Conductors	Total FRH
Platform Personnel			
Maximum Shortage	110	100	210
Shortage start of Advertising Nov. 1942	110	100	210
Shortage as of Sept. 15, 1943	60	20	80

	Wages 6-30-43		7-1-43		Increase	
	Per Hr.	Day	Per Hr.	Day	Per Hr.	Day
Motormen, Conductors, and Street Car Operators (Female)						
First 6 months	\$.80	\$ 6.40	\$.85	\$ 6.80	\$.05	\$.40
Second 6 months	.82½	6.60	.87½	7.00	.05	.40
Third 6 months	.85	6.80	.90	7.20	.05	.40
Thereafter	.87½	7.00	.92½	7.40	.05	.40

Time worked in excess of 8 hours per day and 48 hours per week compensated at 1½ times the rates of pay.

Additional for instructing new employees	10	.80	10	.80	—	—
New employees paid as Trainees	37½	3.00	85	6.80	47½	3.80

Bus Operators

First 6 months	.87½	7.00	.90	7.20	.02½	.20
Second 6 months	.87½	7.00	.92½	7.40	.05	.40
Third 6 months	.87½	7.00	.95	7.60	.07½	.60
Thereafter	.87½	7.00	.97½	7.80	.10	.80

Time worked in excess of 8 hours per day and 48 hours per week compensated at 1½ times the rates of pay.

Additional for instructing new employees	10	.80	10	.80	—	—
Employees paid as Trainees	87½	7.00	90	7.20	.02½	.20

Expenditures on Advertising for Platform Personnel

	Newspaper	Radio	Total
Nov. 1942	\$406.41	\$	\$ 406.41
Jan. 1943	406.82		406.82
Feb.	1,253.73		1,253.73
March	1,247.69		1,247.69
April	1,114.36		1,114.36
May	1,114.36		1,114.36
June	1,282.44	1,358.55	2,640.99
July	1,282.45	1,358.54	2,640.99
Aug.	1,385.00		1,385.00
Sept.	1,385.00		1,385.00

• Totals \$10,878.26 \$2,717.09 \$13,595.35

	July 1943	July 1942	Increase
Cost of Paying Full Time on Report Time	\$1,644.13	\$1,009.89	\$634.24
Cost of Penalty Time by reason of shortage of Platform Men	7,031.43	4,403.80	2,627.63
San Francisco, Calif. Sept. 15, 1943.			

[fol. 523] CASE No. 4680—EXHIBIT No. 24

Kahn, Sept. 15, 1943

Decision No. 31472

Before the Railroad Commission of the State of California

Application No. 21115 (Second Supplemental)

In the Matter of the Application of MARKET STREET RAILWAY COMPANY, for an Order of the Railroad Commission of the State of California Authorizing Emergency Increases in Certain Fares

William M. Abbott and Max Thelen, for Market Street Railway Company, Applicant.

John J. O'Toole, City Attorney, and Dion R. Holm, Deputy City Attorney, for the City and County of San Francisco, Protestant.

Frank S. Richards and Thomas K. McCarthy, for East Bay Transit Company and Key System, Interested Parties.

Edward P. E. Troy, in propria persona.

By the Commission:

Fourth Supplemental Opinion

In this supplemental application authority is sought to establish a basic 7-cent fare to replace the existing 7-cent fare with four tokens for 25 cents, on the lines of the Market [fol. 524] Street Railway thus eliminating the present token fare.¹

(1) *

Item	Present Fare Structure	Proposed Fare Structure (2nd Suppl. App.)
Fares in San Francisco, other than on interurban cars, with free transfers (Tokens shall sell at the rate of 4 for 25 cents)	7¢ cash or one token	
Cash fare in San Francisco, other than on interurban cars, with free transfers		7¢
School children (S.F.) with free transfers to other lines of the company for continuous travel in the same general direction	16 rides for 50¢	16 rides for 50¢

Public hearings were conducted before the Commission en banc at San Francisco, on November 1st, 4th and 7th, 1938, and the matter is now under submission and ready for decision.

A general discussion of this carrier's operations from a physical, financial and operating standpoint appears in the former decisions in this proceeding. As no good cause would be served by repeating it herein this opinion and order will pick up the record from the point it was left by [fol. 525] the prior decisions.²

In Decision Nos. 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory.³

Sunday and Holiday Pass, for use in San Francisco	25¢	25¢
South San Francisco Line	7¢ cash or one token	7¢
San Mateo Line	7¢ cash or one token where 5¢ is charged at present, and no change in balance of present fare structure*	7¢ cash fare, elim- inating sale of tokens at the rate of 4 for 25¢ fare to be in accord- ance with tariff filed with Railroad Commission May 23, 1938

* Present refers to May 9, 1938

² By Decision No. 29889, dated June 21, 1937, applicant was authorized to charge 2¢ for transfers to be superimposed upon its basic 5¢ fare. This transfer charge became effective July 6, 1937.

By Decision No. 30849, dated May 9, 1938, applicant was authorized to change its basic 5¢ fare, with a charge of 2¢ for a transfer, to a level of 7¢ cash in combination with four tokens for 25 cents. This new fare structure became effective May 29, 1938.

(3) In Decision No. 29889 the opinion states as follows:

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place

This is the third time applicant has been before the Commission since April 1, 1937, seeking an increase in its fares. We now have the results of operation that obtained following the two fare charges referred to above, after the company departed from its basic 5 cent fare; namely, a charge of 2 cents for a transfer from July 6, 1937, to May 29, 1938, and a 7 cent cash fare with four tokens for 25 cents from May 29th to the present time.

The evidence adduced at the hearings on this second supplemental application may be summarized as follows:

Financial Position

The record shows that the Market Street Railway Company, as of August 31, 1938, had outstanding \$31,926,450.00 par value of capital stock segregated as follows:

Prior preference stock, 6% cumulative dividends from April 1, 1920	\$11,618,500.00
Preferred stock, 6% dividends cumulative from April 1, 1921	4,986,800.00
Second preferred stock, 6% non-cumulative dividends	4,673,700.00
Common Stock	10,647,400.00

No dividends have been paid on the prior preference stock since January 1, 1924. No dividends have ever been paid on the preferred, second preferred or common stock.

the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

The following is taken from Decision No. 30849:

"A careful review of this record leads to the conclusion that applicant should be authorized to put into effect a basic fare of seven cents cash, with four tokens for 25 cents, with the understanding that the proceeding will be held open for further investigation and study, and if upon a more complete record it appears that this fare structure should be changed, such an order will be entered."

As of September 30, 1938, Market Street Railway Company reports \$4,725,000 of its first mortgage 7 per cent bonds outstanding in the hands of the public. In addition, \$2,361,500 of its first mortgage 7 per cent bonds were alive in the sinking fund. The bonds are dated April 1, 1924, and are due April 1, 1940. The interest is payable quarterly. The payment of the bonds is secured by a trust indenture which is a lien on all the property owned by the company. The indenture obligates the company to pay into the regular sinking fund \$75,000 quarterly, and the interest accruing [fol. 527] on the bonds held alive in the sinking fund. The company has not made sinking fund payments due July 1, and October 1, of the current year. The trust indenture also obligates the company to pay into a special sinking fund, the proceeds realized from the sale of property released from the lien of the indenture. Such proceeds must be used to acquire bonds, which are cancelled.

The record shows that the company has not been able to redeem its 7 per cent bonds through the issue of bonds carrying a lesser interest rate. Its bond issue in relation to the investment in its property is not excessive.

Because of the purchase of equipment, the company is indebted to The J. G. Brill Company in the sum of \$32,724.00 and to Twin Coach Company of Kent, Ohio, in the sum of \$20,965.00.

Its current liabilities as of August 31, 1938, are reported at \$2,359,261.39 segregated as follows:

Loans and notes payable	\$1,375,626.90
Audited accounts and wages payable	901,752.20
Matured interest and rents unpaid	17,429.25
Accrued interest and rents payable	64,453.04
Total	\$2,359,261.39

The loans and notes payable include a \$75,000.00 three per cent note payable to Wells Fargo Bank & Union Trust Co.; \$400,000.00 of four per cent notes payable to Anglo California National Bank; \$24,480.00 of 6% notes payable to Johnson Fare Box Company and \$876,146.90, six per cent open account indebtedness, due Standard Gas and Electric Company.

The audited accounts and wages payable reported at \$901,752.20 include \$660,341.90 due Pacific Gas and Electric

Company. On the latter amount, Market Street Railway Company is paying interest at the rate of 6 per cent per annum.

[fol. 528] Results of Operation

Financial

The following tabulation is taken from Exhibits Nos. 27 and 28:

Item	Exhibit 27	Exhibit 28
	12 Mos. Period Ended Sept. 30, '38	9 Mos. Period Ended Sept. 30, '38
Operating Income		
Railway Operating Revenue	\$6,693,858	\$4,877,808
Railway Operating Expenses	5,828,628	4,284,502
Net Revenue Railway Operation	865,230	593,305
Taxes Assignable to Railway Operation	443,266	342,522
Operating Income	421,963	250,783
Total Non-Operating Income	7,932	5,996
Deductions from Gross Income		
Interest on Funded Debt	343,387	254,898
Interest on Unfunded Debt	98,866	76,341
Total Deductions from Gross Income	468,559	350,460
Net Income	38,664*	93,681*
Depreciation not in the above	500,000	375,000

* Denotes red figure.

The above tabulation shows that applicant has failed to earn its interest charges and depreciation by (a) \$538,664 for the 12 month period ended September 30, 1938, which is an average of \$44,889 per month, and (b) \$468,681 for the 9 month period ended September 30, 1938, which is an average of \$52,076 per month.

For the year ended September 30, 1938, the company's payments to the city other than property taxes amounted to \$196,501.61.⁴

⁴ Exhibit No. 43 shows the following payments to the city for the year ended September 30, 1938:

Paving		\$92,938.61
System Maintenance	\$77,766.97	
Equipment Costs	6,639.61	
Paving Costs—Reconstruction Work	8,532.03	
City's W.P.A. and P.W.A. Projects		36,003.00
Pole Moving	\$25,000.44	
Track Work	11,002.56	
Street Lighting		12,672.00
City Franchise Tax		42,788.00
Golden Gate Park Right of Way		100.00
Ferry Loop Rental (State)		12,000.00
		\$196,501.61

[fol. 529] Traffic

The following tabulation is taken from Exhibit No. 34:

	Passengers Carried (Including Transfer Passengers)		
	Market St. Ry. Co.	Municipal Ry.	Combined
12 mos. ended June 30, 1937	210,547,524	80,754,084	291,301,608
12 mos. ended June 30, 1938	163,265,466	90,290,519	253,555,985
Increase	47,282,058*	9,536,435	37,745,623*
Percentage	22%*	12%	13%*

* Denotes red figure.

It is apparent from this table that the increase in fares on the Market Street Railway has resulted in a substantial diversion from applicant's lines to those of the Municipal Railway. It should be pointed out, however, that beginning July 6, 1937, there was placed in effect a charge of 2 cents for a transfer on applicant's lines. This charge materially reduced transfer riding on the lines of the Market Street Railway.

It is apparent, from the above figures, that the amount of the diversion from the lines of the Market Street Railway to those of the Municipal Railway was in excess of 9,536,435 passengers, as shown above, due to the fact that on the combined operation there was a diminution of travel amounting to 13%. It is only reasonable to conclude that had the two systems been operating on the same fare structure, the loss to each would have been substantially the same on a percentage basis. Therefore, the diversion from the lines of the Market Street Railway to those of the Municipal Railway was substantially in excess [fol. 530] of 10,000,000 passengers.

Estimated Revenue With 7-Cent Fare

With respect to the probable change in gross revenue that would obtain if applicant's plan of eliminating the tokens were placed in effect, this is a speculative matter as is evidenced by the various estimates presented in this record on the subject. The following tabulation shows a summary of these estimates of the probable increase in revenue that would have obtained had the token fare of 6 1/4 cents been replaced by a 7-cent cash fare for the four-month period of June to September, inclusive, 1938:

Witness and Exhibit Number	Estimated Increase in Gross Revenue (4-month Period)
Kahn, Exhibit No. 36 (Applicant)	\$110,392
Hall, Exhibits Nos. 45 and 46 (Commission Transportation Engineer)	55,610 60,512
Beck, Oral Testimony, Transcript P. 418 (Valuation & Rate Engineer) (City Attorney's Office, S. F.)	9,931

Exhibit No. 36 is based upon the assumption that the only curtailment in revenue traffic which the company would have suffered with the proposed increase in fare would have consisted of a decrease of 5 per cent of the present token riders on the competitive lines; or in other words, it was assumed that there would have been no decrease or diminution of the token riders on the non-competitive lines.

Exhibits Nos. 45 and 46 are based upon the assumption that there would have been a decrease of 5 per cent in the token rides on non-competitive lines and 8 per cent on competitive lines.

[fol. 531] Mr. Beck assumes in his estimate that there would have been a decrease of 10 per cent of all token riders on the system. In each case it is assumed that this fare change would not have affected the 7-cent cash fare riders.

The record shows that on the average the normal volume of traffic carried on applicant's lines during the four-month period (June to September) is somewhat less than the yearly average. Although the above estimates were made by engineers thoroughly familiar with the local public transportation problem in San Francisco, there is a wide difference of opinion between these estimates.

Abandonment of Lines

Mr. Kahn testified that the company had made an unsuccessful effort to reduce operating expenses through the abandonment of what was considered unprofitable and unnecessary operations from a public convenience and necessity standpoint, by filing petitions with the Board of Supervisors of the City and County of San Francisco seeking authority to abandon certain lines. The company's petition to abandon the operation of the Castro Street cable

line has recently been denied by the Board, and no action has been taken on applicant's petition to abandon operations on a portion of the Guerrero Street line (Tr. pp. 302-303).

Applicant's Exhibit No. 42 shows the financial results of operation of the system by lines for the month of September, 1938. This exhibit shows that the revenue received on many of the lines is less than the average cost of providing the service. This exhibit, when considered in connection with Exhibit No. 22, which is a map showing all the lines of the three local transportation systems serving the city of San Francisco, affords the Commission a basis to study the matter of duplication of service with consideration directed to the question of profitable operation on the various lines of the Market Street Railway.

[fol. 532] "Jitney" Competition

Reference has heretofore been made in said Decisions Nos. 29889 and 30849 in this proceeding to the matter of "jitney" competition. It appears that there are now 136 "jitneys" operating under permits issued by the Police Commission of the City and County of San Francisco. These permits are issued on an annual basis and must be renewed on or about January 1st of each year. The record shows that if this "jitney" competition were eliminated the Market Street Railway's net operating revenue would be substantially increased. The estimates of this increase vary from \$100,000 to \$200,000 a year. The "jitneys" operate in direct competition with certain lines of the Market Street Railway. The Police Commission has never authorized the operation of "jitneys" which would compete with any of the lines of the Municipal Railway. It appears that a very small section of San Francisco, if any, would be deprived of reasonable and adequate transportation service if the "jitney" bus operation were eliminated as practically all their business is picked up along the lines of the Market Street Railway.

One Man Car Operation

At this time approximately one-third of applicant's operations are conducted with one-man street cars assisted by ground loaders at the heavy loading points.

Exhibit No. 30 contains an estimate of increased labor costs of \$303,924 per year that would have obtained if two

men had been employed on the one-man car lines. Ordinances of the City and County of San Francisco prohibit one-man car operation. In July of 1938 the Federal Circuit Court of Appeals reversed a decree of the District Court which enjoined enforcement of these ordinances. (*San Francisco v. Market Street Railway Co.*, 98 Fed. (2d) (Adv. Ops.) 628.) Rehearing was denied in September of 1938. Affirmance of the decision of the Circuit Court by the United States Supreme Court, followed by enforcement of these ordinances, would result in adding substantial operating expenses in labor costs.

[fol. 533] Summary

The problem here before the Commission is a serious one. It directly affects not only the Market Street Railway and that portion of the public using its line, but it affects the welfare of San Francisco as a whole: San Francisco should have an adequate transportation system at the lowest possible cost. The problem is complex because two major street railway systems serve the city. The Municipal line can continue to operate at a 5-cent fare because of inherent advantages in taxes; interest charges; its ability to absorb losses, eliminate unprofitable lines at will, and prevent "jitney" competition; and because of the fact that it has enjoyed a substantial increase in traffic diverted from the Market Street Railway as a result of the differential in fare. The Market Street Railway, operated as a private company, is not so fortunately situated. Its income has not been sufficient to pay currently all of its operating expenses and taxes. It has, as stated, recently failed to pay the amounts due the sinking fund. On August 31, 1938, the company's cash on hand amounted only to \$141,617.58, a sum wholly inadequate to pay any substantial part of its unfunded debt. We do not wish to imply from any statement contained herein that payment of interest on indebtedness, or the payment of the debt is a charge to operating expenses. Both payments are a burden upon the amount realized as a "return" on the value of the company's properties. Attention is called to the interest payments and the indebtedness only to indicate the financial condition of the Market Street Railway Company.

The record shows conclusively that under existing conditions, as a private concern, it cannot operate on a 5-cent

[fol. 534] fare, nor can it continue to operate under present conditions at existing fares. The Market Street Railway, we must assume will continue to be privately operated; as the San Francisco public has twice emphatically rejected a plan for municipal operation.⁵

Thus, we must decide what relief may be afforded the Market Street Railway to prevent a collapse or partial collapse of its service. That this be prevented is particularly important to San Francisco on the eve of the inauguration of the Golden Gate International Exposition.

An important factor in considering a fare structure for a public street transportation system is the matter of a single coin fare for at least the majority of the riders. Applicant's present fare offers this advantage. If, on the other hand, the proposed plan is adopted to establish a 7-cent fare, it will involve a three-coin fare, which would have the disadvantage of slowing up the service as well as other attendant disadvantages.

[fol. 535] Past experience lends doubt as to the wisdom of further increasing fares. Neither the 2-cent transfer charge nor the token fare improved the financial position of the company. However, there is evidence in this record to show that the company may improve its earning position with a 7-cent fare. How extensive this improvement

“Q. (Commissioner Riley) This may not be a question that you care to answer in detail, but you must have made a study of the Market Street line inasmuch as it was coming ~~to~~, possibly, to your management. Is it your opinion that it could be profitably operated on a 5-cent fare?

A. (Mr. Cahill) No, sir.

Q. Upon what fare structure do you think it could be operated?

A. Inasmuch as I am firmly of the conviction, Mr. Commissioner, that San Francisco is committed to a 5-cent fare, I have never tried to go into any fare structure higher than that, any more than my old friend Mr. O'Shaughnessy did, and Mr. O'Shaughnessy and I are both of the opinion that if the City and County of San Francisco ever took over the Market Street Railway Company it would operate and we both recommended that it operate on a 5-cent fare and that the inevitable deficit be taken up in the tax rate.”

(Tr. p. 456)

would be is largely a matter of opinion. The company estimates that it would obtain \$331,176 increased revenue. The Commission's Transportation Engineer estimates the increased revenue would be, at the maximum, about \$180,000 per year, while the Rate Engineer for the city estimates the increased revenue would be about \$30,000 per year.

While the record shows that some financial improvement may be experienced by the company under a straight 7-cent fare, the public should be spared this additional burden if other avenues are open to afford the company the relief to which it is entitled and which under the regulatory laws the Commission must give it.

As we view the evidence before us, the present financial plight of the Market Street Railway is caused by three major factors. First, the Municipal Railway fare of 5 cents, which has resulted in a substantial diversion of traffic from the lines of the Market Street Railway; secondly the jitney bus competition; and thirdly, the inability of the Market Street Railway to abandon its non-profitable lines.

“A. (Mr. Cahill) In my opinion there is no question that there are a number of lines the same as those that Mr. Kahn has named which should be deleted from the Market Street Railway Company's system.” Transcript, P. 459.

“Commissioner Riley” I failed to take into account the fact that the Market Street Railway has jitney competition. You have no jitney competition? A. (Mr. Cahill) No, that is one of the reasons why we have been more successful.

Q. Do you feel that jitney service is required in the city? A. I believe that the paramount interests of the city require mass transportation to be taken into consideration, and before any other type of mass transportation is transportation by street cars under our present system. I think that the Market Street Railway could provide service enough to carry all the people along Mission Street, for example, but they won't if they are not offered the passengers, and I would not blame them, neither would I. However, that is another thing which I believe lies entirely in the jurisdiction of the Board of Supervisors of San Francisco—I am not so sure. Is that right, Mr. Holm?” Transcript, P. 460.

[fol. 536] If the Municipal Railway were competing upon equal terms with the Market Street Railway, at a 5-cent fare, its financial condition would be at least equally precarious. Probably the best solution of the problem would be a universal 6-cent fare in San Francisco but, as the Commission has no jurisdiction over the Municipal Railway, it would be an idle act for this Commission to recommend this fare.

However, we believe the earning position of the Market Street Railway may be materially improved without resorting to a further increase in fares. The two remaining factors which have caused the distressed financial condition of the Market Street Railway are "Jitney" bus competition and the failure to abandon non-profitable lines.

Elimination of "jitney" bus competition, which has never been permitted on streets paralleling the Municipal Railway, will result in a gain in revenue of approximately \$250,000 per year, excluding increased operating costs. The failure of the Market Street Railway to obtain authority of the Board of Supervisors to abandon its non-profitable lines has also deprived applicant of the opportunity to better its financial position. In this connection, however, it may be said fairly that the efforts of the company along these lines has been perfunctory. Rather than presenting before the Board of Supervisors a comprehensive plan, they have approached the problem in a piece meal fashion. If all, or the major part of their non-profitable lines were abandoned, the savings resulting therefrom, plus the additional revenue obtained from the elimination of "jitney" bus competition, would place the company in a better financial condition than if the Commission authorized the straight 7-cent fare. And if the cooperation of the city is obtained to effectuate these recommendations, the riders of the Market Street Railway would be saved thousands of dollars annually. In reaching this conclusion, however, we must point out that a great portion, if not all, of the benefits derived from this plan would be obliterated if the city finally prevails in its program of eliminating one-man car operation. The lines to be abandoned may inconvenience a portion of the public, but their abandonment will not leave this part of the public without any transportation facilities, as the abandoned lines will be in close proximity to other street car or bus lines.

Findings

A careful review of the record herein impels the following conclusions:

First—Applicant Market Street Railway Company cannot, under existing conditions, maintain an adequate transportation service at a 5 cent fare, nor under its present fare structure.

Second—Under the circumstances disclosed by the record the elimination of “jitney” competition together with the abandonment of operation, in whole or in part, of the lines hereinafter specified in the order, will place applicant in a better earning position than will the establishment of a straight seven cent fare.

Third—Applicant should immediately petition the Board of Supervisors of the City and County of San Francisco for such authority or permission as it may be necessary to obtain from the municipality in order to abandon operation, in whole or in part, of those lines hereinafter specified in the order.

Fourth—Applicant should immediately petition the appropriate officers or boards of the City and County of San Francisco for such form of relief as may be necessary in order to eliminate “jitney” competition.

Fifth—Should the authority and relief mentioned in the two preceding paragraphs not be accorded and made effective on or prior to January 1, 1939, the only alternative is to permit an increase of fare to 7 cents, such increase to become effective on January 1, 1939.

[fol. 538]

Supplemental Order

Good cause appearing, It is ordered as follows:

I—Subject to the conditions hereinafter set forth in Paragraphs II and III of this order, Market Street Railway Company is hereby authorized to file the following schedule of fares with the Commission, said schedule to become effective on January 1, 1939, it being found that the increases therein contained are justified in the event that the authority and relief hereinafter mentioned in Paragraphs II and III of this order are not accorded applicant

by the City and County of San Francisco as of January 1, 1939.

"Cash fares in San Francisco other than on interurban cars, with free transfers	7 cents
School children (San Francisco), with free transfers to other lines of the company for continuous travel in the same general direction, 16 rides for	50 cents
Sunday and Holiday pass, for use in San Francisco	25 cents
South San Francisco line	7 cents

San Mateo line 7 cents cash fare, eliminating sales of tokens at the rate of 4 for 25 cents, fare to be in accordance with tariff filed with Railroad Commission on May 23, 1938."

II—Market Street Railway Company is hereby directed to petition forthwith the appropriate boards or officers of the City and County of San Francisco for such authority or permission as may be necessary in order to abandon operation, in whole or in part, of the lines hereinafter specified in Paragraph III of this order, and is also directed to petition forthwith said boards or officers for such form of relief as may be necessary in order to eliminate "jitney" competition. Should such authority and relief be accorded applicant and made effective on or prior to January 1, 1939, the present application for authority to increase fares is hereby denied.

[fol. 539] III—In so far as this Commission may have jurisdiction, Market Street Railway Company is hereby authorized to abandon operation, *in whole or in part*, on such of the following lines as to which abandonment may be sought by applicant and authorized or permitted, on or prior to January 1, 1939, by the appropriate boards or officers of the City and County of San Francisco:

Number	Name
23	Richland Avenue
8	Market Street
24	Divisadero Street, O'Farrel to Laeto
30	Army Street
35	Howard Street

Number	Name
	South San Francisco
	Sacramento Cable
	Castro Cable
54	Sunset Coach
10 and 26	Guerrero Street (Rearrangement of service on Nos. 10 and 26 lines).

IV—The Commission reserves the right to alter, amend or revoke the authority herein granted and to make such further orders as to it may seem right and proper.

V—Except as otherwise specified above, the effective date of this order shall be the twentieth day after the date hereof.

Dated, San Francisco, California, this 23rd day of November, 1938.

Ray C. Wakefield, Leon O. Whitsell, Ray L. Riley,
Commissioners.

Certified as a true copy.

(Sgd.) H. G. Mathewson, Secretary, Railroad Commission of the State of California.

[fol. 540]

CASE 4680

Kahn Exhibit No. 25

Filed 9-15-43

Decision No. 31603

Before the Railroad Commission of the State of California

Application No. 21115

(Second Supplemental)

In the Matter of the Application of MARKET STREET RAILWAY COMPANY, for an order of the Railroad Commission of the State of California authorizing emergency increases in certain fares.

By the Commission:

Fifth Supplemental Order

Market Street Railway Company in its Second Supplemental Application, filed on December 14, 1938, advised

the Commission that it had filed with the Board of Supervisors of the City and County of San Francisco requests (1) for the repeal of the ordinances passed by said Board of Supervisors authorizing and permitting the operation of the so-called "jitneys" in said city, as set forth in Section II of said Decision No. 31472, and (2) to abandon the operation, in whole or in part, of street railway service as delineated in Section III of the order in said Decision No. 31472. These filings were made pursuant to the provisions of Decision No. 31472, dated November 23, 1938. On December 12, 1938, said Board of Supervisors denied said requests. Applicant may now place in effect on January 1, 1939, the fares prescribed in Section I of said decision.

In said Second Supplemental Application applicant requests authority to use tokens as a coin of convenience to the public, said tokens to be sold at the rate of five for thirty-five cents, each token to have the value of one cash fare.

It appears that the request is reasonable and should be granted, therefore

It is hereby ordered that Market Street Railway is authorized, on and after January 1, 1939, to use tokens to be sold at the rate of five (5) for thirty-five (35) cents and each token to have a value of one cash fare. In all other respects Decision No. 31472 shall remain in full force and effect.

[fol. 541] Dated at San Francisco, California, this 27th day of December, 1938.

Ray C. Wakefield, Frank R. Devlin, Carl C. Baker,
Commissioners.

Certified as a true copy.

(Sgd.) H. G. Mathewson, Secretary, Railroad Commission of the State of California.

Filed 9-15-43

Market Street Railway Company

Manpower and Employment

As of September 1, 1943, the Market Street Railway Company had on its payroll 1949 employees. We lacked the following number of employees to fill our scheduled needs:

Platform employees	119
Track Maintenance employees	44
Equipment Maintenance employees	52
Other Personnel	14
Total	229

The above shortage of personnel has not materially affected our ability to serve the Shipyards and other War Industries or the public generally, best proven by the fact that in August 1943 we operated 95.09% of our scheduled runs. This was accomplished by employees voluntarily working overtime.

Likewise, track maintenance and equipment maintenance work has been carried on satisfactorily, the shortage of help being partially met by employees voluntarily working overtime. The Track Department employees for some months have been working 60 hours per week instead of 48 hours per week, and the Elkton Shop employees have been working 48 hours instead of 40 hours per week.

[fol. 543] Were we permitted to operate one-man cars in San Francisco, we would gain sufficient manpower to not alone fill all of our schedules but to augment our service very materially.

Total Number of Employees

	Jan. 1, 1942	Jan. 1, 1943	Sept. 1, 1943
Platform employees	1,331	1,355	1,315
Equipment Maintenance	231	269	271
Track Maintenance	144	129	118
Clerical and other employees	222	231	245
Total	1,928	1,984	1,949
Total Number of Employees in Armed Forces	30	149	163

Labor Turnover

	Year 1942	8 Mos. 1943
Platform employees.....	714	806
Equipment Maintenance.....	205	286
Track Maintenance.....	80	26
Clerical and other employees.....	101	94
Total.....	1,100	1,212

Resigned or Entered Armed Forces

	Year 1942	8 Mos. 1943
Platform employees.....	690	846
Equipment Maintenance.....	167	284
Track Maintenance.....	95	37
Clerical and other employees.....	92	80
Total.....	1,044	1,247

[fol. 544] The company suffered a net loss of 35 employees during the first 8 months of 1943.

In July 1942, the company started to employ women for work as conductors. In subsequent months the plan of using women for platform work was expanded to cover employment as motorwomen and as coach operators.

It is interesting to note that the Market Street Railway Company was one of the first transit companies on the Pacific Coast to employ women for platform work. Our experience in this regard has been as follows:

Women Employed in Transportation Department

	Year 1942	8 Mos. 1943
Employed		
Motorwomen.....	30	49
Conductorettes.....	171	116
Coach Operators.....	6	27
	207	192
Resigned		
Motorwomen.....	15	38
Conductorettes.....	70	112
Coach Operators.....	0	18
	85	168

As shown, we have employed 399 women and lost 253, leaving a net of 146. Women have proven entirely satisfactory as conductorettes, motorwomen and coach operators. However, stability of employment has been disappointing.

[fol. 545] Help Wanted Advertising

Newspaper

From July 17, 1942 to August 12, 1943 the company ran advertisements 331 times in the four San Francisco daily

papers, as well as other newspapers, as shown in the following tabulation.

July 17, 18, 1942	News, Call-Bulletin	
" 17, 18, 19, 1942	Chronicle, Examiner	
August 2, 1942	Chronicle, Examiner	
" 6, 7, 8, & 9, 1942	Chronicle, Examiner, News, Call Bulletin, Budde Pub.	
September 8, 1942	Chronicle, Examiner, News, Call Bulletin	
" 20 & 21, 1942	Chronicle, Examiner	
" 23, 24, and 25, 1942	Chronicle, Examiner, News, Call Bulletin	
" 27, and 28, 1942	Chronicle, Examiner	
November 7, 1942	News	
" 8, 1942	Chronicle, Examiner	
" 11, 1942	Call Bulletin	
" 13, & 16, 1942	Call Bulletin, Modesta Bee, Napa Daily Register, Lodi Times, Santa Rosa Rep. Santa Rosa Dem. Petaluma Argus, Lodi Sentinel, Stockton Record	
November 21 & 22, 1942	Chronicle, Examiner, News, Call Bulletin	
" 29 & 30, 1942	Chronicle, Examiner	
" 30, 1942	News, Call Bulletin	
December 9, 10, 11 & 12, 1942	Chronicle, Examiner, News, Call Bulletin	
" 10, 1942	Chronicle, News, Call Bulletin	
" 11, 1942	Examiner	
" 12, 1942	L'Italia	
January 3, 4 & 5, 1943	Examiner, News, Call Bulletin	
" 3, 4, 5 & 6, 1943	Chronicle	
" 9 and 11, 1943	News, Call Bulletin	
" 10 and 11, 1943	Chronicle, Examiner	
" 16, 18, & 19, 1943	News, Call Bulletin	
" 17, 18, & 19, 1943	Chronicle, Examiner	
" 23, 25, & 26, 1943	News, Call Bulletin	
" 24, 25, & 26, 1943	Chronicle, Examiner	
February 24, 25, & 26, 1943	Chronicle, Examiner, News, Call Bulletin	
March 2, 3, 4, 5, 6, 7, & 8, 1943	Chronicle, Examiner, News, Call Bulletin	
" 7, 8, 9, 10, 11, 12, & 13	Chronicle, Examiner, News, Call Bulletin	
" 10, 11 and 12, 1943	Chronicle, Examiner	
" 10, 11 and 12, 1943	News, Call Bulletin	
[fol. 546]		
April 23, 24, and 25, 1943	Chronicle, Examiner	
" 23, 24, and 26, 1943	News, Call Bulletin	
May 25-28, 1943	Chronicle	
" 25-28, 1943	Examiner	
" 25-28, 1943	News	
" 25-28, 1943	Call Bulletin	
July 6-9, 1943	Chronicle (2 ads)	
" 5-7, 1943	News (2 ads)	
" 9-10, 1943	Examiner	
" 9-10, 1943	Call Bulletin	
July 16-17	Chronicle	1 column-6 inches
July 18-19	Chronicle	1 column-1 1/2 inches
July 16	Examiner	1 column-4 1/2 inches
July 17	Examiner	1 column-8 inches
July 16-17	News	1 column-6 inches
July 16-17	Call-Bulletin	1 column-6 inches
July 23-24		
25-26	Chronicle	1 column-6 inches
July 23-24-25	Examiner	1 column-6 inches
July 23-24	News	1 column-6 inches
July 23-24	Call-Bulletin	1 column-6 inches
Aug. 1-2-3-4	Chronicle	1 column-6 inches
Aug. 1-2-3	Examiner	1 column-5 1/4 inches
July 30-31	News	1 column-6 inches
July 30-31	Call-Bulletin	1 column-6 inches

Aug. 2-3-4	News	1 column—6 inches
Aug. 2-3-4	Call-Bulletin	1 column—6 inches
Aug. 5-6-7	Chronicle	1 column—6 inches
Aug. 5-6-7	Examiner	1 column—6 inches
Aug. 5 and 7	News	1 column—6 inches
Aug. 5 and 7	Call-Bulletin	1 column—6 inches
Aug. 8-9-10	Chronicle	1 column—6 inches
Aug. 8-9-10-11-12	Examiner	1 column—6 inches

Cost of the above advertising was approximately \$8,000.00. Photostat copies of typical advertisements for help are made a part of this Exhibit.

[fol. 547] Radio

During May and June 1943, the company advertised for help over Station KGO Blue Network using 35 spot announcements. The total cost of this advertising was \$274.00.

Posters

Posters advertising for help wanted have been used practically continuously during the past year. Protostat copies of typical posters are made a part of this Exhibit.

Outdoor Advertising

Outdoor signs on all of the company buildings advertising for help have been employed. Photograph of typical outdoor sign is made a part of this Exhibit.

Signs on Vehicles

One street car and one motor coach, as per photographs made a part of this Exhibit, are now being employed for help wanted advertising. These vehicles of course are in regular passenger service.

Employee Bonus Plan

Photostat copy of letter addressed to all employees of the Company by President Kahn on April 6, 1943 offering inducement to employees of the company to introduce applicants is made a part of this Exhibit. Since the plan was introduced, about 50 new employees have been obtained.

[fol. 548] Part Time Employees

In November 1942, the company decided to hire part time platform employees; in other words, men regularly

employed outside concerns. There are employed at the present time 113 men on a part time basis. These men are used primarily to fill tripper schedules operated during the morning and evening peak hours; also to fill regular Sunday and holiday schedules.

Pay While Training

In July 1943, the company started paying beginners full rate of platform pay to students while training instead of paying one-half of the beginners' rate as had been the plan for approximately the past year. This change was made to stimulate employment of new persons and has a beneficial effect.

Order No. 9328—War Manpower Commission

On April 8, 1943, the War Manpower Commission prescribed certain regulations governing employment in essential activities, which regulations became effective 12:01 AM Sunday, April 18, 1943. Transportation service was classed as an essential activity.

In accordance with the program of stabilization and utilization, and specifically Article 2 of that program, the company and Carmen's Union Division 1004 nominated members of the Local Committee to be organized in our company. This committee, an official subordinate agency of the Area War Manpower Committee, started to function on May 6, 1943.

[fol. 549] Since that date up to September 1, 1943, the Committee considered 135 three-day-notice applications resulting in 63 rejections and the issuance of 72 clearances.

Manning Tables—Replacement Schedules

Under date of July 12, 1943 the Market Street Railway Company made formal application to the War Manpower Commission to participate in the manning table plan. This application was accepted by the War Manpower Commission.

On August 2, 1943 the company filed replacement schedules with the Selective Service System, California State Headquarters, and received approval on the same date, acceptance No. 691 being assigned.

Summary

As shown, during the first 8 months of 1943, the company has employed 1,212 persons. This has only been accomplished through an aggressive employment policy and through the use of the various expedients aforementioned.

LVN:MLB. 9-10-43.

(Here Follows 1 Paster, Side Folio 550)

Market Street Railway Company

Month	Average Daily Runs Scheduled				Total	Total Men Req. to Operate Reg. Runs & Trippers	Number of Runs Operated	Number of Runs Not Operated.	% of Sched. Runs Operated
	Runs		Trippers						
	2-Man	1-Man	2-Man	1-Man					
Jan. 42.....	422	193	9		615	1055	615		100.00
Feb. 42.....	421	193	11		614	1057	614		100.00
Mar. 42.....	422	193	7		615	1051	615		100.00
Apr. 42.....	427	198	4		625	1060	625		100.00
May 42.....	434	198	4		632	1074	632		100.00
Jun. 42.....	434	198	4		632	1074	632		100.00
Jul. 42.....	441	199	2		640	1085	640		100.00
Aug. 42.....	435	200	2		635	1074	635		100.00
Sep. 42.....	450	196	2		646	1100	646		100.00
Oct. 42.....	457	196			653	1110	653		100.00
Nov. 42.....	457	196			653	1110	651	2	99.70
Dec. 42.....	457	196			653	1110	645	8	98.79
Jan. 43.....	457	196			653	1110	642	11	98.32
Feb. 43.....	461	196			657	1118	649	8	98.78
Mar. 43.....	468	188			656	1124	644	12	98.18
Apr. 43.....	467	194			661	1128	643	18	97.28
May 43.....	467	194			661	1128	637	24	96.37
Jun. 43.....	475	193			668	1143	630	38	94.32
Jul. 43.....	453	189	36	3	642	1170	606	36	94.40
Aug. 43.....	442	189	55	3	631	1186	600	31	95.09

Note: The above figures do not include "Relief" men for regular men's day off.

[fols. 551-563] (Photographs of advertisements, and of a letter addressed to employees, used by Market Street Railway Company in attempting to secure additional employees, attached as exhibits to statement re Manpower and Employment, Market Street Railway Company, filed September 15, 1943, as Exhibit No. 26 in the Railroad Commission proceedings, omitted in printing.)

[fol. 564] CASE 4680—NEWTON EXHIBIT No. 27

Filed 9-15-43

The Market Street Railway Company

Service Complaints Received from the Railroad Commission Year 1943

January 25, 1943—Complaint from Mrs. Ernest Lenn regarding turning back cars of the No. 1 and No. 2 lines at 32nd Avenue.

June 25, 1943—Complaint from Warren K. Brown regarding service of Third Street motor coach line to Visitation Valley.

July 30, 1943—Complaint from Carroll Newburgh regarding turning back cars of the No. 6 line at Haight and Fillmore Streets after 6:00 P. M.

August 17, 1943—Complaint from Francis Guido regarding the use of "Victory" type cars on the San Mateo line, Daly City to San Bruno.

LVN:MLB 9-11-43.

[fol. 565] CASE 4680—NEWTON EXHIBIT No. 28

Filed 9-15-43

Market Street Railway Company

Service Complaints Received by the Market Street Railway Company by Letter from Patrons Year 1943

January 7, 1943—Chas. F. Patten complained that motor coaches on the No. 19 line failed to stop at Post and Larkin Streets.

January 11, 1943—L. J. Carey complained regarding overcrowded street cars.

January 12, 1943—Mrs. J. F. Calverley asked for service after 1:00 A. M. on the Geneva Avenue coach line.

January 19, 1943—John A. Trinchere asked for better service on the No. 24 Castro-Divisadero-Fillmore Street line.

January 16, 1943—L. D. McDonald complained regarding discourtesy of conductor.

January 19, 1943—M. E. Pelly complained about service on the No. 20 line.

January 22, 1943—R. J. O'Rourke complained regarding service on Cortland Avenue for school children.

[fol. 566] February 3, 1943—C. G. Geneva complained about service on the No. 42 Sansome Street line between 5:30 P. M. and 6:00 P. M.

February 3, 1943—F. E. Phillips complained because motorman passed up a group of school children on the No. 5 McAllister Street line.

February 6, 1943—C. F. Bulotti complained regarding discourtesy of motorman.

February 17, 1943—Ernest Catalano complained of discourtesy of conductor.

March 7, 1943—Timothy Sullivan complained of No. 5 car leaving the Beach terminal ahead of time.

March 16, 1943—Miss Virginia Drake complained of lack of service on the No. 19 Polk Street line.

March 17, 1943—Mae E. Barter complained of lack of service in Visitacion Valley District.

March 26, 1943—H. Rosa complained of service on the No. 15 line to North Beach terminal.

March 31, 1943—Inspector of Naval Material complained of passing up passengers on the No. 20 line at Fourth and Bryant Streets, and at Powell and Ellis Streets.

April 6, 1943—Geo. Zwillinger complained of skip stops and of motorman passing up passenger at Nineteenth Avenue and Fulton Street.

[fol. 567] April 29, 1943—Wm. P. Bear complained of motorman of No. 31 line failing to stop at Octavia and Turk Streets.

May 11, 1943—Logan Paine complained of service on the No. 12 Ingleside line.

June 8, 1943—Thomas Gosland complained of irregular service on the No. 24 Castro-Fillmore coach line.

June 25, 1943—Robt. D. Rossi complained of service on the No. 19 Polk Street line.

June 30, 1943—Peter tum Suden complained regarding service on the No. 7 and No. 17 lines.

July 26, 1943—Mrs. L. Steenberg complained of lack of service on the No. 26 line.

July 31, 1943—Benjamin F. Lickey complained of discourtesy of conductorette.

Total service complaints received by letter—24.

LVN:MLB 9-11-43.

fol. 568] CASE 4680—NEWTON EXHIBIT No. 29

Filed 9-15-43

Market Street Railway Company

Changes Made in Operating Practices—Revision of Routes in Accordance with Directives or Suggestions of the Office of Defense Transportation

On December 18, 1941, the President of the United States issued Executive Order No. 8989 creating in the Office For Emergency Management of the Executive Office of the President an Office of Defense Transportation.

By subsequent Orders the functions, duties and powers of the Office of Defense Transportation were further defined, these Orders being No. 9156 May 2, 1942; No. 9214 August 5, 1942; No. 9294 January 4, 1943.

Copies of these Orders are made a part of this Exhibit.

On April 17, 1942, Mr. Joseph B. Eastman, Director, Office of Defense Transportation, issued a statement of policy and outlined therein a 12-point program, as follows:

- (1) Staggered Hours.
- (2) Full Use of All Street Railway Lines.
- (3) Diversion of Traffic to Street Railway Routes.
- (4) Turn Back Service.
- (5) Fewer Stops.
- fol. 569] (6) Standard of Service in Non-Rush Hours.
- (7) Extension of Bus Services.
- (8) Charter Buses.
- (9) School Buses.
- (10) Street Traffic Control.
- (11) Revision of Schedules.
- (12) Use of Parkway Roads by Buses.

A copy of this statement of policy is made a part of this Exhibit.

In compliance with this program or declaration of policy, the following has been accomplished.

(1) Staggered Hours

On November 16, 1942 a staggered hour plan became effective in San Francisco. This plan was formulated under the jurisdiction of the State Railroad Commission of California, Mr. Warren K. Brown acting as Chairman and working with representatives of the Army, Navy, Maritime Commission, Office of Defense Transportation, Office of Civilian Defense, City and County of San Francisco, Transportation Companies, Large Department Stores, and Other Business Interests.

This plan had very beneficial results especially during the evening peak period, in that it broadened the peak quite considerably and permitted of two round trips of a number of cars during the evening rush hour which were formerly making only one trip during the peak period.

[fol. 570] (2) Full Use of All Street Railway Lines

Street Railway Companies were asked to take immediate steps to obtain the fullest possible use of all operable rail lines and equipment.

In compliance with this policy motor coaches were removed during the peak periods, or in part, from the No. 25 San Bruno line, No. 36 Folsom line, No. 19 Polk-Larkin line.

Street car service was restored on Army Street on December 7, 1942, operating between Mission Street and Third Street.

(3) Diversion of Traffic to Street Railway Routes

On April 15, 1943 street car service on Third Street from Townsend Street to the foot of the viaduct at Mariposa Street was established, this being done to furnish through street car service to employes of the Bethlehem Steel Company (Union Iron Works) from North Beach (Powell and North Point St.) to Third and Mariposa Street. Street car service on Third Street from North Beach to the Southern Pacific Depot at Third and Townsend Street was augmented and the number of bus trips from Broadway and Kearny Street to the Southern Pacific Depot reduced, thereby re-

leasing said buses for service to the Union Iron Works and Hunters Point Naval Dry Docks.

On May 17, 1943 street car service was restored on the No. 26 line from Daly City via San Jose Avenue to Onondaga and Mission Street, at which time the outer terminal of the No. 26 motor coach line was established at Ocean and [fol. 571] San Jose Avenue, instead of Daly City.

As already outlined, street car service was placed on Polk and Larkin Street from Market to Aquatic Park, thereby releasing buses for service to War Industries.

On March 21, 1943 the No. 10 Glen Park coach line was made a shuttle line operating from Monterey Boulevard and Genesee Street to 29th and Mission Street only, instead of operating to the Ferry Building via Mission Street.

(4) Turn Back Service

In so far as possible, the company placed in effect turn backs on all of its lines thereby conserving manpower and materials as well as to place the service on that portion of the lines where riding density required.

(5) Fewer Stops

In conformity with Office of Defense Transportation policy, 554 stops were eliminated out of 5,057 stops in the Market Street Railway System. A reduction of 10.95% in the number of stops has been made.

It has been the policy of the company not to institute skip-stops on hilly portions of its lines.

(6) Standard of Service in Non-Rush Hours

No material changes have been made in the service rendered by the company in non-rush hours. It is our understanding however that certain recommendations will be made by the Office of Defense Transportation shortly directing reduction of service on certain of our lines during the off-peak periods.

[fol. 572] (7) Extension of Bus Services

No extension of existing bus service has been made since the establishment of the Office of Defense Transportation to other than War Industries. A coach line was established from the Bethlehem Steel Company (Union Iron

Works) from Third and 20th Street to 26th and Castro Street via Third, Army, Guerrero, 26th Street. Also the Silver Avenue coachline was extended from its terminal at Oakdale and Third Street to Hunters Point via Third and Evans Avenue. This routing was changed on September 12, 1943 to reach Hunters Point via Palou Street and Access Road. Also on the same date coach service was inaugurated from Hunters Point to 26th and Castro Street via Evans Avenue, Third Street, Army Street, Guerrero Street, 26th Street.

In the Fall of 1942, direct coach service was established from Broadway and Kearny Street to Hunters Point via Kearny, Third and Evans Avenue. This service has been expanded until in today's operation we have 20 coaches operating direct to Hunters Point during the change of shifts at the Hunters Point Naval Dry Docks. Sixteen of these coaches are operated under lease from the Navy.

(8) Charter Buses

All charter coach service except that work in connection with the War effort was discontinued in April 1942. Since October 1942, the company has been operating from 3 to 5 coaches in contract service for the Western Pipe and Steel Company, South San Francisco, operating from Van Ness Avenue and Bay Street; also from California Street and [fol. 573] Arguello Boulevard via Daly City to South San Francisco. This service was approved by the Office of Defense Transportation.

(10) Street Traffic Control—None

(11) Revision of Schedules

Checks have been taken on all lines to insure adequacy of service or inversely, waste of service. Our schedules have been revised practically continuously to meet the present day demands.

(12) Remodeling of Street Cars

Since December 1942, 48 electric street cars have been remodeled so as to increase carrying capacity. These cars are referred to as "Victory" type cars. All of the remodeled cars have folding doors at the ends, these being operated by door engines. The bulkheads and cross seats have

been removed and longitudinal seats installed in the car on either side the full length of the car. Ample stanchions and grab handles have been provided. The aisle width is 30 inches.

[fol. 574]

EXECUTIVE ORDER No. 8989

Establishing the Office of Defense Transportation in the Executive Office of the President and Defining Its Functions and Duties

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to define further the functions and duties of the Office for Emergency Management with respect to the state of war and to assure maximum utilization of the domestic transportation facilities of the Nation for the successful prosecution of the war, it is hereby ordered:

1. The term "domestic transportation" whenever used in this Order shall include railroad, motor, inland waterway, pipe line, air transport and coastwise and intercoastal shipping.

2. There shall be in the Office for Emergency Management of the Executive Office of the President an Office of Defense Transportation, at the head of which shall be a Director appointed by the President. The Director shall discharge and perform his responsibilities and authorities under the direction and supervision of the President. The Director shall receive compensation at such rate as the President may determine and, in addition, shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties.

3. Subject to such policies, regulations, and directions as the President may from time to time prescribe, the Office of Defense Transportation shall:

a. Coordinate the transportation policies and activities of the several Federal agencies and private transportation groups in effecting such adjustments in the domestic transportation systems of the Nation as the successful prosecution of the war may require.

b. Compile and analyze estimates of the requirements to be imposed upon existing domestic transport facilities by the needs of the war effort; determine the adequacy of such facilities to accommodate the increased traffic volume occasioned by the war effort; develop measures designed to secure maximum use of existing domestic transportation facilities; and stimulate the provision of necessary additional transport facilities and equipment in order to achieve the level of domestic transportation services required; and in this connection advise the Supply Priorities and Allocation Board as to the estimated requirements and recommend allocations of materials and equipment necessary for the provision of adequate domestic transportation service.

[fol. 575] c. Coordinate and direct domestic traffic movements with the objective of preventing possible points of traffic congestion and assuring the orderly and expeditious movement of men, materials, and supplies to points of need.

d. In cooperation with the United States Maritime Commission and other appropriate agencies, coordinate domestic traffic movements with ocean shipping in order to avoid terminal congestion at port areas and to maintain a maximum flow of traffic.

e. Perform the functions and exercise the authority vested in the President by the following, subject to the conditions set forth in paragraph 3 of this Order:

(1) Sec. 1 (15) of Interstate Commerce Act as amended, U. S. C. title 49, sec. 1 (15).

(2) Sec. 6 (8) of Interstate Commerce Act as amended, U. S. C. title 49, sec. 6 (8).

f. Survey and ascertain present and anticipated storage and warehousing requirements at points of transfer and in terminal areas; and encourage the provision of increased storage, loading, and unloading facilities where necessary.

g. Represent the defense interest of the Government in negotiating rates with domestic transportation carriers and in advising the appropriate governmental agencies with respect to the necessity for rate adjustments caused by the effect of the defense program.

h. Advise upon proposed or existing emergency legislation affecting domestic transportation, and recommend such

additional emergency legislation as may be necessary or desirable.

i. Keep the President informed with respect to progress made in carrying out this Order; and perform such related duties as the President may from time to time assign or delegate to it.

4. In the exercise of its functions and authority with respect to transportation priorities and preferences, the Office of Defense Transportation shall be governed as to the relative importance of deliveries required for defense by such instructions, certifications, and directives as may be issued by the Office of Production Management pursuant to the provisions of the Executive Order of August 28, 1941, entitled "Delegation and Coordination of Priority Authority;" and the Office of Defense Transportation shall take all lawful steps within the scope of its authority to effect such deliveries through appropriate public or private agencies.

[fol. 576] 5. In the study of problems and in the discharge of its responsibilities, it shall be the policy of the Office of Defense Transportation to collaborate with existing departments and agencies which perform functions and activities pertaining to transportation and to utilize their facilities and services to the maximum. Particularly, the Office of Defense Transportation shall maintain close liaison with the United States Maritime Commission in the consideration of problems involving the relationship of ocean shipping with coastwise and intercoastal shipping and inland transport; with the Interstate Commerce Commission on problems of rates, routing and car service; and with the War and Navy Departments with respect to the strategic movement of troops and supplies by domestic transportation carriers. The Office of Defense Transportation may arrange for the establishment of committees or groups of advisers representing two or more departments and agencies or private transportation groups, as the case may require, to study and develop plans for the coordination and most effective use of existing domestic transportation facilities.

6. To facilitate unity of policy and action and the use of existing governmental services, the heads of each of the following departments and agencies shall designate a re-

sponsible representative or representatives to maintain formal liaison with the Office of Defense Transportation: The Department of War, the Department of the Navy, the Department of the Treasury, the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Interstate Commerce Commission, the United States Maritime Commission, the Civil Aeronautics Board, the Federal Works Agency, the Federal Loan Agency, the Board of Investigation and Research appointed under the Transportation Act of 1940, the Office of Production Management, the Office of Price Administration, the Economic Defense Board, and such additional departments and agencies as the President may subsequently designate.

7. There shall be within the Office of Defense Transportation a Division of Railway Transport, a Division of Motor Transport, a Division of Inland Waterway Transport, a Division of Coastwise and Intercoastal Transport, and such other operating and staff divisions as the Director may determine. The Director may provide for the internal management of the Office of Defense Transportation and shall obtain the President's approval for the appointment of the heads of the above divisions and such other divisions as may be established.

8. Within the limits of such funds as may be appropriated or allocated to the Office of Defense Transportation, the Director may employ necessary personnel and make provision for the necessary supplies, facilities, and services. However, the Office of Defense Transportation shall use [fol. 577] such statistical, informational, fiscal, personnel, and other general business services and facilities as may be made available through the Office for Emergency Management.

Franklin D. Roosevelt.

The White House, December 18, 1941.

(U. S. Code Cong. Service 1941, p. 989)

[fol. 578]

EXECUTIVE ORDER No. 9156

Further Defining the Functions and Duties of the Office of
Defense Transportation

By virtue of the authority conferred upon me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered:

1. In addition to the functions, duties and powers conferred upon it by Executive Order No. 8989, approved December 18, 1941, the Office of Defense Transportation shall:

a. Include within the scope of its authority and responsibility, as defined in said order, all rubber-borne transportation facilities, including passenger cars, buses, taxicabs, and trucks.

b. Develop programs to facilitate any continuous adjustment of the Nation and its transport requirements to the available supply of transportation services relying upon rubber.

c. Formulate measures to conserve and assure maximum utilization of the existing supply of civilian transport services dependent upon rubber, including the limitation of the use of rubber-borne transportation facilities in non-essential civilian activities, and regulation of the use or distribution of such transportation facilities among essential activities.

2. The several Federal departments and agencies which perform functions relating to the conservation or use of rubber borne transportation facilities shall, in discharging such functions, conform to such policies, programs, and measures as the Director of the Office of Defense Transportation may prescribe in the execution of the powers vested in him by this order and by Executive Order No. 8989.

3. Nothing herein shall be deemed in any way to limit the functions and authority of the Chairman of the War Production Board under paragraph 4 of Executive Order No. 8989 of December 18, 1941 and paragraph 1a of Executive Order No. 9040 of January 24, 1942, nor the rationing authority delegated to the Office of Price Administration by

War Production Board Directives No. 1 of January 24, 1942, No. 1A of February 2, 1942, No. 1B of February 9, 1942, No. 1C of February 28, 1942, or any other Directive of the War Production Board supplementary thereto.

Franklin D. Roosevelt.

The White House, May 2, 1942.

(U. S. Code Cong. Service 1942, p. 443)

[fol. 579]

EXECUTIVE ORDER NO. 9214

Extending the Authority of the Office of Defense Transportation to Domestic Transportation within the Territories and Possessions of the United States

By virtue of the authority conferred upon me by the Constitution and statutes of the United States, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

In addition to the powers conferred upon it by Executive Order No. 8989 of December 18, 1941, and Executive Order No. 9156 of May 2, 1942, the Office of Defense Transportation shall include within the scope of its authority, as defined in the said orders, all domestic transportation within the territories and possessions of the United States.

Franklin D. Roosevelt.

The White House, August 5, 1942.

(U. S. Code Cong. Service 1942, p. 1022)

[fol. 580]

EXECUTIVE ORDER NO. 9294

Further Defining of the Functions and Duties of the Office of Defense Transportation

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered:

I

1. The term "local passenger transportation equipment" whenever used in this Order shall include buses, street rail-

way cars, trolley coaches, trucks converted for passenger transportation, ferryboats, and other vehicles and vessels used or capable of being used to carry nine or more passengers (including the operator) in public or private carrier service.

2. In addition to the functions, duties, and powers conferred upon it by Executive Order No. 8989, approved December 18, 1941, Executive Order No. 9156, approved May 2, 1942 and Executive Order No. 9214, approved August 5, 1942, the Office of Defense Transportation shall:

a. Advise and assist Federal departments and agencies, State and local governments, and private organizations in surveying the need for and planning the provision of transportation service for the movement of personnel to and from war plants and establishments, and where necessary, initiate and develop such surveys and plans. Due consideration should be given in making such surveys and plans to all transportation needs of each area, including those related to production in the war effort; agricultural as well as industrial, to military and naval establishments, and to essential civilian services.

(b) Review and approve such contracts, agreements, or arrangements hereafter made by Federal departments and agencies or by private firms (except common carriers) holding contracts from such departments and agencies, for the purchase, lease requisition or use of new or used local passenger transportation equipment, as the Director considers necessary to ensure the proper provision of passenger transportation services to war plants and establishments; in the discretion of the Director, review, approve, or direct the re-negotiation of such contracts, agreements, or arrangements now in effect, except those on which final payment has been made prior to the date of this Order.

(c) Advise the War Production Board on the allocation of new local passenger transportation equipment; and, as [fol. 581] necessity arises, recommend to the War Production Board programs and procedures for controlling the transfer and placement of used local passenger transportation equipment.

3. No Federal department or agency or private firm (except common carriers) holding a contract from such depart-

ment or agency shall hereafter complete arrangements for the purchase, lease, requisition, or use of local passenger transportation equipment without giving prior notice thereof to the Office of Defense Transportation, and, if the Director considers it necessary, without submitting the contract, agreement, or arrangement to the Office of Defense Transportation for review and approval. The Office of Defense Transportation shall establish appropriate procedures for carrying out the purpose of this Order and each affected department or agency shall designate an official representative to advise with the Office of Defense Transportation on such matters.

4. Nothing herein shall be deemed in any way to limit the functions and authority of the Chairman of the War Production Board under paragraph 4 of Executive Order No. 8989 of December 18, 1941, and paragraph 1 (a) of Executive Order No. 9040 of January 24, 1942, of the War Shipping Administrator, or of the Interstate Commerce Commission.

5. The provisions of this Order respecting the use of local passenger transportation equipment shall not apply to movements of military and naval personnel when on maneuvers, on trips made under orders, or on other special operations necessary for the prosecution of the war.

II

1. The Office of Defense Transportation shall include within the scope of its authority as defined in this and all other Orders defining its functions all domestic transportation within the territories and possessions of the United States.

2. The Director of the Office of Defense Transportation is hereby designated as the head of any agency which may initiate action for the requisitioning of property under the terms of and in accordance with the procedures established by Executive Order No. 8942, approved November 19, 1941.

Franklin D. Roosevelt.

The White House, January 4, 1943.

(U. S. Code Cong. Service 1943, p. 53)

[fol. 582]

April 17, 1942.

To All Operators of Street Cars and Buses and All Public Authorities Having Regulatory Powers Over Such Operators:

The Office of Defense Transportation, through its Division of Local Transport, is using two means for requiring that existing passenger transport vehicles be utilized to the utmost and that critical materials be conserved.

First, general or specific orders have and will be issued in matters which warrant the direct exercise of the authority vested in the Director by the Executive Order of December 18, 1941.

Second, statements of policy will be made to public authorities and operators of transit vehicles whose cooperation with the objects of this Office is assumed. This is such a statement of policy.

Our present policy in the following matters is determined almost entirely by the stoppage of rubber imports and the desperate need for conserving all the rubber now in our possession. Waste of rubber tires under present conditions is little short of disloyalty to the national interest.

[fol. 583] (1) Staggered Hours

~~A carefully prepared plan of staggering working, store and office hours~~ offers by far the greatest opportunity for increasing the carrying capacity of existing transit vehicles. Regulatory authorities and transit operators should encourage the development of such programs and participate in the preparation of plans for carrying them out.

In communities where the number of buses required in the rush hours can be reduced by opening schools at a later hour, public officials and transit operators should cooperate to attain this objective.

(2) Full Use of All Street Railway Lines

Transit companies and regulatory authorities should take immediate steps to obtain the fullest possible use of all operable rail lines and equipment. This will require discontinuance of bus and trolley coach services which are

being provided over routes where street railway lines are or can be made operable as well as on street railway routes now being served part of the time by buses or trolley coaches.

(3) Diversion of Traffic to Street Railway Routes

Wherever it is practicable to alter schedules and routes so as to divert passengers from present bus lines to street railway routes, such alteration of schedules and routes should be made.

(4) Turn Back Service

On transit routes to outlying districts much capacity is wasted by sending too many vehicles to the outer ends of such routes. This waste should be eliminated by turning back some vehicles at intermediate points, or by operating shuttle vehicles over the outer portions of such routes at less frequent intervals. In other cases, waste should be eliminated by operating shuttle services over branch lines which are presently through routed.

[fol. 584] (5) Fewer Stops

The number of passengers stopping places on bus and street car routes should be reduced wherever possible. A stopping place within 500 feet of another is undesirable and wasteful and should be eliminated. A reasonable standard is to space stopping places at distances of 660 feet to 1,200 feet.

(6) Standard of Service in Non-Rush Hours

The general practice of bus operators is to provide seats in excess of the number of passengers during non-rush hours. This practice should be modified so that buses and trolley coaches carry at least full seated loads during non-rush hours.

(7) Extension of Bus Services

Extension of existing bus routes and inauguration of new routes should be made only to places of defense employment and military and naval establishments or to meet similar situations where failure to provide such additional

service will have a definitely unfavorable effect on the war effort.

(8) Charter Buses

Buses not operated in regularly scheduled service whether run on a chartered or individual fare basis, should be operated only to carry workers to and from places of defense employment or to meet similar situations where failure to provide such service will have a definitely unfavorable effect on the war effort.

Acceptable charter or special business includes transportation of selectees, of groups made up principally of members of the armed forces, of participants in organized recreational activities at military posts, and school children, teachers and other school employees to and from school only, and under appropriate conditions the necessary transportation of under-privileged children.

[fol. 585] Unacceptable charter or special business includes civilian parties to beaches, pleasure resorts, picnic places, points of historic interest, race tracks, baseball and other sporting events.

A bus operator who has filed public tariffs as a charter carrier, should not be subject to any penalty on account of his refusal to accept proffered charter business not compatible with this statement of policy. Regulatory authorities should discourage the acceptance of charter business by one operator which has been refused by another in accordance herewith.

(9) School Buses

It may be necessary in some localities during the period of the war emergency to utilize school buses which are capable of providing safe transportation where established common carriers are unable to provide the service. Operators of school buses should cooperate with transit companies and defense industries located in the vicinity of schools served by them in solving the transportation problems of their communities.

(10) Street Traffic Control

Traffic regulations and controls have generally been operated to facilitate the movement of automobiles. Dur-

ing the present emergency the movement of mass transit vehicles should take precedence, and the efficient movement of such vehicles should be the major consideration in the timing of traffic control devices.

[fol. 586] (11) Revision of Schedules

Operators of transit vehicles should continuously analyze their schedules, first, in order to minimize standing time of vehicles at terminals, and, second, in order to take full advantage of opportunities for saving time as street traffic congestion is reduced. Both of these measures will reduce the number of vehicles required to render a given service.

(12) Use of Parkway Roads by Buses

The use of parkway roads by buses would in many places permit substantial savings in mileage, time and rubber. In such cases, parkway authorities should remove restrictions on bus operation unless the roadway construction is too light to withstand such traffic.

Joseph B. Eastman, Director Office of Defense Transportation.

[fol. 587] CASE 4680—NEWTON EXHIBIT No. 30

Filed 9-15-43

Market Street Railway Company

Inspectors

The company employs at the present time one Chief Inspector, twenty-eight Regular Inspectors, and two Relief Inspectors. It is the duty of these men to supervise the operation of street cars and motor coaches, doing that which may be necessary to preserve proper headway and schedule observance. In case of delays due to any cause it is the duty of the Inspector to restore proper service as promptly as possible. There is made a part of this exhibit statement entitled "Inspector Personnel," also statement entitled "Inspectors on Duty—P. M. Peak."

At the present time the company owns and operates eight motorcycles and these machines are operated by the

Inspectors in order to facilitate their work. The Inspectors report to the Chief Inspector via street telephones strategically located. Also they work in close cooperation with the Dispatchers in the various car barns.

LVN:MLB 9-11-43

[fol. 588]

Inspector Personnel

H. G. Wilson, Chief Inspector

17 Day Districts

11 Night Districts

2 Relief Inspectors

Major Portion Motorized
Covering 20 Hours Spread
Of Operation, Using
8 Motorcycles.

Week Days

District #1.

P. McDermott, Badge #1.

7:45 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 3:00 PM

3:00 PM to 6:00 PM

Turk & Divisadero, on #20, 24 & 31 lines.

Sutter & Fillmore, on #1, 2, 3, 4 & 22 lines.

Off for lunch.

Turk & Divisadero, on #20, 24 & 31 lines.

District #2.

J. Cummings, Badge #2.

7:30 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 2:45 PM

2:45 PM to 4:30 PM

4:30 PM to 5:30 PM

Market Street, 7th to Ferry, all lines.

Market Street from Gough to Ferry, all lines.

Off for lunch.

Market Street, 7th to Ferry, all lines.

Flagman at Geary & Market Street.

District #3.

R. A. Lions, Badge #4.

7:00 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 2:45 PM

2:45 PM to 6:00 PM

Market Street from 7th to Gough, paying particular attention to #19 & 21 lines.

Off for lunch.

Market Street from Gough to Ferry on all lines.

Market Street from 7th to Gough, paying particular attention to #19 & 21 lines.

District #4.

W. Maupin, Badge #7.

7:00 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 3:30 PM

3:50 PM to 6:00 PM

Sutter & Fillmore Streets on #1, 2, 3, 4, & 22 lines.

Off for lunch.

Sutter & Fillmore Streets on #1, 2, 3, 4, & 22 lines.

Ferry Terminal, start mission cars.

District #5.

S. Greene, Badge #11.

6:00 AM to 2:30 PM

Broadway & Kearny Streets, all street car and coach lines.

[fol. 589]

District #6.

R. Wetzel, Badge #34.

7:00 AM to 10:00 AM

10:30 AM to 1:30 PM

1:30 PM to 4:30 PM

4:30 PM to 6:00 PM

S. P. Depot on #15, 16, 42, & 43 lines.

28th & Mission Streets, all Mission and Valencia Lines.

Off for lunch.

Jones and McAllister Streets, placing #5 cars into Market Street in proper places.

District #7.

R. T. Spencer, Badge #6.
6:30 AM to 10:30 AM

10:00 AM to 11:30 AM

11:30 AM to 3:30 PM

All Mission and Fillmore Lines at 16th and Mission Streets.

Off for lunch.

All Mission and Fillmore Lines at 16th and Mission Streets.

District #8.

P. O. Peterson, Badge #10.

7:00 AM to 10:30 AM

10:30 AM to 1:30 PM

1:30 PM to 6:00 PM

28th & Mission Streets on #9, 10, 12, 14, 26, & #40 lines.

Off for lunch.

28th & Mission Streets on #9, 10, 12, 14, 26, & #40 lines.

District #9.

E. Spencer, Badge #17.

7:00 AM to 9:00 AM

9:00 AM to 11:45 AM

11:45 AM to 2:30 PM

2:30 PM to 3:30 PM

3:30 PM to 5:45 PM

Divisadero and Haight Streets on #6, 7, 17, 20, & #24 lines, paying strict attention to #24 line.

Off for lunch.

Both sides of Park from Divisadero to Beach, and Ellis to Haight Streets, watch all lines.

Divisadero & Haight Streets on #6, 7, 17, 20, and #24 lines, paying strict attention to #24 lines.

Haight & Masonic and South Side of Park.

District #10.

H. Cohn, Badge #9.

7:00 AM to 9:00 AM

9:00 AM to 11:30 AM

11:30 AM to 2:30 PM

2:30 PM to 6:00 PM

8th Ave. and Fulton Street on #5, 21, & #31 lines.

Both Sides of Park from Divisadero to Beach and from Ellis to Haight Streets on all lines.

Off for lunch.

8th Ave. & Fulton Street on #5, 21, & 31 lines.

During school time take care of Lowell High School for break in afternoon.

[fol. 590]

District #11.

M. P. Boragno, Badge #21.

7:00 AM to 10:00 AM

10:00 AM to 11:30 AM

11:30 AM to 2:30 PM

2:30 PM to 6:00 PM

16th & Bryant Streets on #25, 27 & 22 lines, paying attention to Southern Heights Coach Line.

16th & Mission Streets, all mission and #22 lines.

Off for lunch.

Broadway & Kearny Streets, all street car and coach lines.

District #12.

H. Shurgin, Badge #20.

4:00 PM to 5:30 PM

5:30 PM to 12:30 PM

Placing #31 cars into Market Street.

All Market from 4th to Gough Streets.

District #13.

A. Lewkowicz, Badge #19.

4:30 PM to 5:30 PM

6:00 PM to 1:00 AM

Placing Sutter Cars into Market Street.

All lines south of Market Street from 16th & Mission Streets to Daly City.

District #14.

J. E. Graham, Badge #30.

3:30 PM to 12:00 M. N.

Sutter & Fillmore Streets, on #1, 2, 3, 4, & 22 lines.

District #15.

H. A. Donovan, Badge #26.

4:30 PM to 5:35 PM

5:45 PM to 1:00 AM

(Act. Inspector, Serving Probation).

Placing Haight Street cars into Market Street.

South Side of Park on #6, 7, 17, 20, & 33 lines.

District #16.

H. J. Reedy, Badge #28 (Assistant Chief Inspector).

4:30 PM to 5:40 PM On #41 line at 2nd & Market Streets.

5:40 PM to 1:00 AM Ferry, East Bay Terminal and in charge of all Districts.

1:00 AM to 2:00 AM At Ferry to take care of boats returning with shipyard workers.

District #17.

I. D. Hester, Badge #23.

3:00 PM to 6:00 PM 20th & 3rd Streets, take care of Union Iron Works.

6:00 PM to 11:00 PM S. P. Depot, all coaches south of Market St.

11:00 PM to 12:00 M. N. 20th & 3rd Streets, take care of Union Iron Works.

[fol. 591]

District #18.

H. Behlendorf, Badge #14.

2:00 PM to 3:10 PM 16th & Bryant Streets on #22, 25, 27 & #36 lines.

3:20 PM to 4:00 PM 18th & 3rd Streets on #22 line (Iron Works).

4:10 PM to 5:30 PM 16th & Bryant Streets on #22, 25, 27 & #36 lines.

5:45 PM to 10:30 PM 8th Ave. & Fulton Street on #5, 21, & 31 lines.

District #19.

L. Logasa, Badge #15.

6:45 AM to 8:00 AM

8:00 AM to 10:00 AM

10:00 AM to 1:00 PM

1:00 PM to 5:45 PM

3rd & Revere Streets on 3rd Street Coaches.

Wilde Ave. on 3rd Street Coaches and #25 street cars.

Off for lunch.

Wilde Ave. on 3rd Street Coaches and #25 Street Cars.

District #20.

T. Larsen, Badge #24.

7:00 AM to 10:00 AM

10:00 AM to 11:30 AM

11:30 AM to 2:30 PM

2:30 PM to 6:00 PM

S. P. Depot on #20, 41 & 42 lines.

S. P. Depot on 3rd Street Coaches.

Off for lunch.

S. P. Depot on #20, 41 & 42 lines, also watch 3rd Street Coaches when possible. Pay strict attention to #41 line between 4:25 & 5:35 PM.

District #21:

J. Casey, Badge #35.

6:30 AM to 11:00 AM

11:00 AM to 12:30 PM

12:30 PM to 4:00 PM

All coach lines.

Off for lunch.

All coach lines.

District #22.

W. L. Harrison, Badge #18.

3:30 PM to 4:10 PM

4:10 PM to 5:15 PM

5:20 PM to 6:00 PM

6:00 PM to 9:00 PM

3rd & Mariposa Streets, #20 line (Iron Works).

First & Mission Streets, Space Mission Cars, and watch East Bay Terminal Cars.

3rd & Mariposa Streets, #20 line (Iron Works).

All Coach Lines, paying particular attention to #19 line until same is OK, and then ride all coach lines and send in check of service.

9:00 PM to 10:30 PM

10:30 PM to 1:00 AM

[fol. 592]

Off for lunch.

All Coach Lines, ride same and check service.

District #23.

C. J. Dussourt, Badge #13.

3:30 PM to 5:40 PM

5:40 PM to 6:25 PM

6:25 PM to 10:30 PM

10:30 PM to 12:00 M.

Broadway & Fillmore on #24 line and also watch #22 line.

8th Ave. and Fulton Street on #5 & 21 lines.

Divisadero & Turk Streets on #24, 20 & 31 lines.

North Side of Park on #5, 20, 21, 24 & 31 lines.

District #24.

C. Evans, Badge #27. (Act. Inspector, Serving Probation).

3:30 PM to 5:15 PM 16th & Mission Streets on all Mission Lines, also #22, 36 & 22 lines.

5:30 PM to 6:00 PM 18th & 3rd Streets on #22 line (Iron Works).

6:15 PM to 11:15 PM 16th & Mission Streets on all Mission Lines, also #33, 36 & 22 lines.

11:30 PM to 12:00 Mn. 18th & 3rd Streets on #22 line (Iron Works).

District #25.

J. Salvato, Badge #36.

4:30 PM to 6:00 PM

Sutter and Kearny Streets, taking care of all Sutter Lines, also spacing 3rd Street Coaches as much as is practical.

6:00 PM to 1:00 AM

Broadway & Kearny Streets on, 3rd Street Coaches and Street Cars, also look over all Cable Lines, and take care of Sutter Lines.

District #26.

F. Fox, Badge #8.

7:00 AM to 9:00 AM

At Beach Terminal on #5 & 7 lines keeping headways filled.

9:00 AM to 11:30 AM

Off for lunch.

11:30 AM to 5:30 PM

At Beach Terminal on #5 & 7 lines keeping headways filled.

District #27.

H. Brown, Badge #16.

7:00 AM to 11:00 AM

At Daly City placing #14 cars on headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

11:00 AM to 2:00 PM

Off for lunch.

2:00 PM to 6:00 PM

At Daly City placing #14 cars on headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

[fol. 593]

District #28.

J. P. Haslam, Badge #25.

(Starter, permanent transfer to Inspector list as of September 15th, 1943.)

9:00 AM to 12:00 M.

First & Mission Streets, all Mission Lines and East Bay Terminal Lines.

12:00 M to 12:30 PM

Sutter and Sansome Streets, spacing outbound Sutter cars.

12:30 PM to 1:30 PM

Off for lunch.

1:30 PM to 4:00 PM

First and Mission Streets, all Mission Lines and East Bay Terminal Lines.

4:00 PM to 6:00 PM

Sutter & Sansome Streets, load and space Sutter cars.

Relief Inspectors.

Block #1, Worked by Insp. J. S. Gyorgy, Badge #3.

Working as follows:

District #16, 12, 17, off, 4, 9, 5.

Block #2 worked by Insp. J. S. Ferretti, Badge #22.

Working as follows:

District #15, 18, 13, 23, 24, off.

9-6-43, PWF.

[fol. 594]

Inspectors on Duty—PM. Peak
4:00 P. M. to 6:00 P. M.

District #1.

P. McDermott, Badge #1.

4:00 PM to 6:00 PM

Turk & Divisadero, on #20, 24 & 31 lines.

District #2.

J. Cummings, Badge #2.
4:00 PM to 4:30 PM
4:30 PM to 5:30 PM

Market Street, 7th to Ferry, all lines.
Flagman at Geary and Market Streets.

District #3.

R. A. Lions, Badge #4.
4:00 PM to 6:00 PM

Market Street, from 7th to Gough Streets, all lines,
paying particular attention to #19 & 21 lines.

District #4.

W. Maupin, Badge #7.
4:00 PM to 6:00 PM

Ferry Terminal, Start Mission Cars.

District #6.

R. Wetzel, Badge #34.
4:00 PM to 6:00 PM

Jones & McAllister Streets, placing #5 cars into
Market Street in proper places.

District #8.

P. O. Petersen, Badge #10.
4:00 PM to 6:00 PM

28th & Mission Streets on #10, 12, 14, 26, 9 & 40
lines.

District #9.

E. Spencer, Badge #17.
4:00 PM to 5:45 PM

Haight & Masonic and South Side of Park.

District #10.

H. Cohn, Badge #9.
4:00 PM to 6:00 PM

8th Ave. & Fulton Street on #5, 21, & 31 lines, during
school time take care of Lowell High School for
break in afternoon.

District #11.

M. P. Boragno, Badge #21.
4:00 PM to 6:00 PM

Broadway & Kearny Streets, all coaches and street
cars.

District #12.

H. Shurgin, Badge #200.
4:00 PM to 5:30 PM
5:30 PM to 6:00 PM

Placing #31 cars into Market Street.
All of Market from 4th to Gough Streets.

[fol. 595]

District #13.

M. Lewkowitz, Badge #19.
4:30 PM to 5:30 PM

Placing Sutter Cars into Market Street.

District #14.

J. E. Graham, Badge #30.
4:00 PM to 6:00 PM

Sutter & Fillmore Streets on #1, 2, 3, 4 & 22 lines.

District #15.

H. A. Donovan, Badge #26.
4:30 PM to 5:35 PM
5:35 PM to 6:00 PM

(Act. Inspector, Serving Probation).
Placing Haight Street Cars into Market Street.
South Side of Park on the #6, 7, 17, 20 & 23 lines.

District #16.

H. J. Reedy, Badge #28.
4:30 PM to 5:40 PM
5:40 PM to 6:00 PM

(Assistant Chief Inspector).
On #41 line at Second and Market Streets.
Ferry and East Bay Terminal and in charge of all
Districts.

District #17.

I. D. Hester, Badge #23.
4:00 PM to 6:00 PM

20th & Third Streets (Union Iron Works).

District #18.

H. Behlendorf, Badge #14.

4:10 PM to 5:30 PM

5:45 PM to 6:00 PM

16th & Bryant Streets on #22, 25, 27 & 36 lines.
8th Avenue & Fulton Streets on #5, 21 & 31 lines.

District #19.

L. Logasa, Badge #15.

4:00 PM to 5:45 PM

Third Streets & Wilde Avenue, coaches & #25 street cars.

District #20.

T. Larsen, Badge #24.

4:00 PM to 6:00 PM

S. P. Depot on #20, 41 & 42 lines, watch Third Street coaches when possible, pay strict attention to #41 line between 4:25 and 5:35 PM.

District #22.

W. J. Harrison, Badge #18.

4:00 PM to 4:10 PM

4:10 PM to 5:15 PM

5:20 PM to 6:00 PM

Third & Mariposa on #20 line (Union Iron Works).
First & Mission Streets, space Mission Cars and watch East Bay Terminal Cars.

Third & Mariposa Streets on #20 line (Iron Works).

District #23.

C. J. Dussourt, Badge #13.

4:00 PM to 5:40 PM

5:40 PM to 6:00 PM

Broadway & Fillmore Streets, on #22 & 24 lines.
8th Avenue & Fulton Streets, on #5 & 21 lines.

[fol. 596]

District #24.

C. Evans, Badge #27. (Act. Inspector, Serving Probation).

4:00 PM to 5:15 PM

5:30 PM to 6:00 PM

16th & Mission Streets on all Mission Lines, also #33, 36 & 22 lines.

18th & Third Streets on #22 line (Union Iron Works).

District #25.

J. Salvato, Badge #36.

4:30 PM to 6:00 PM

Sutter & Kearny Streets, taking care of all Sutter Lines and spacing Third Street coaches as much as practical.

District #26.

F. A. Fox, Badge #8.

4:00 PM to 5:30 PM

At Beach Terminal on #5 & #7 lines, keeping headways filled.

District #27.

H. Brown, Badge #16.

4:00 PM to 6:00 PM

At Daly City Terminal placing #14 lines on their headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

District #28.

J. P. Haslam, Badge #25.

4:00 PM to 6:00 PM

Starter, (Permanent Transfer to Inspectors List) as of September 15th, 1943.)

Sutter and Sansome Streets, spacing outbound Sutter Line Cars.

9/6/43
HKH

[fol. 597] CASE 4680—NEWTON EXHIBIT No. 31

Filed 9-15-43

Market Street Railway Company

Service to Shipyards and War Industries.

Statement showing the Part the Market Street Railway Company is Playing in the War Effort

Since December 7, 1941 (Pearl Harbor) the Market Street Railway Company has had as its policy of operation that service to Shipyards and War Industries is the primary consideration and that consistent with that policy satisfactory and adequate service would be rendered on all of its lines. Herewith is given statement of service rendered by the company to the principal war establishments.

(1) Street car service to the Ferry Building to provide transportation to employes in Yards #1, #2, #3 at Richmond, California. Street car schedules connect with Ferry boats leaving San Francisco from 5:30 A. M. to 11:00 P. M., and arriving in San Francisco from 8:55 A. M. to 1:50 A. M.

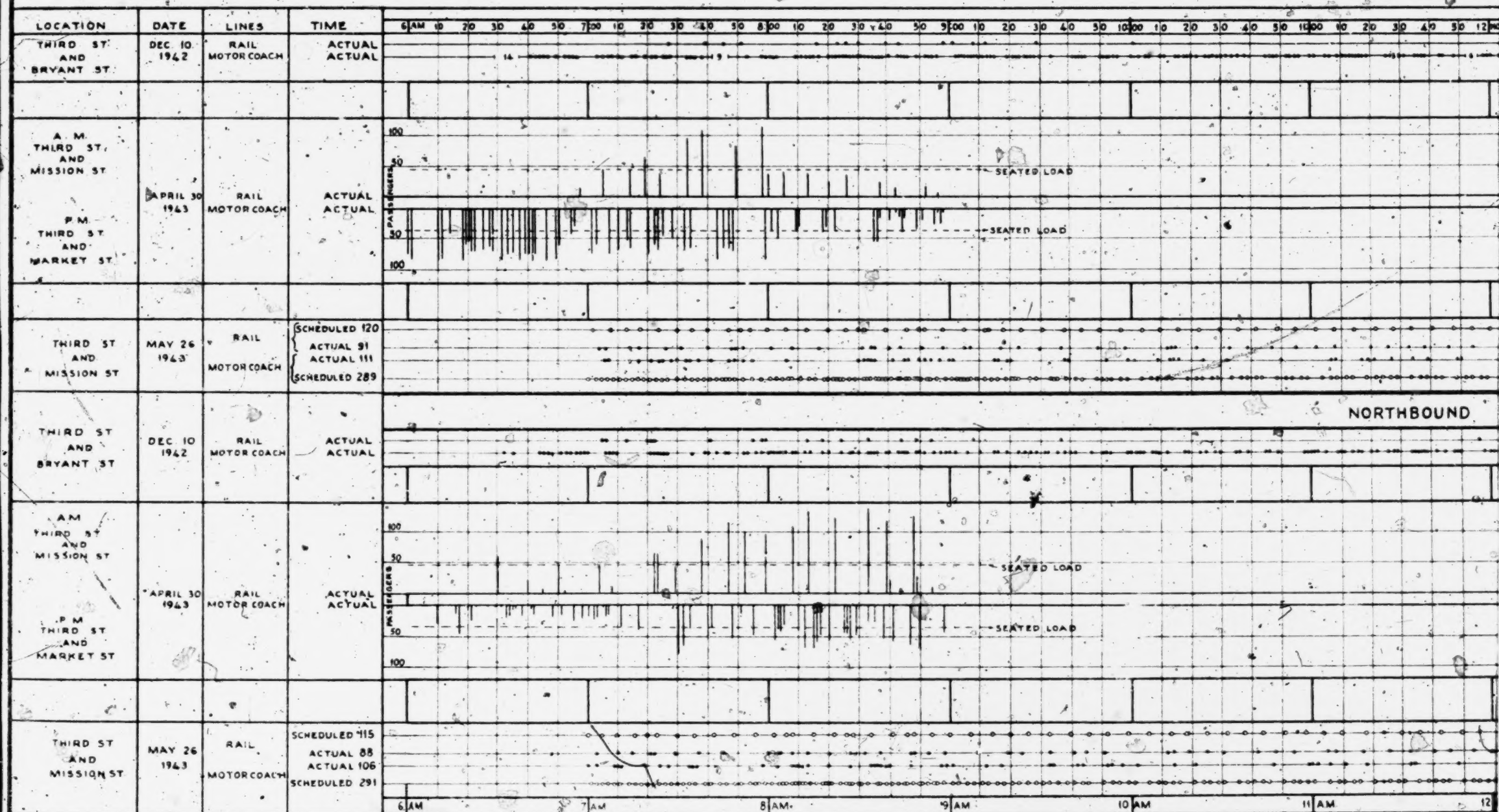
(2) Motor coach service is operated from Broadway and Kearny Street to Hunters Point via Kearny, Third and Evans Avenue. Those coaches arriving at Hunters Point [fol. 598] from 6:00 A. M. to 8:00 A. M. are operated non-stop or express from Mission Street to Army Street. Twenty coaches are presently in this service.

(3) Cross-town coach service has been established from Silver Avenue and Mission Street to Hunters Point via Silver Avenue, Palou Street and Access Road. Also from 26th and Castro Streets to Hunters Point via 26th, Guerrero, Army, Third, and Evans Avenue. Full service is rendered on these lines from 5:25 A. M. to 12:42 A. M.

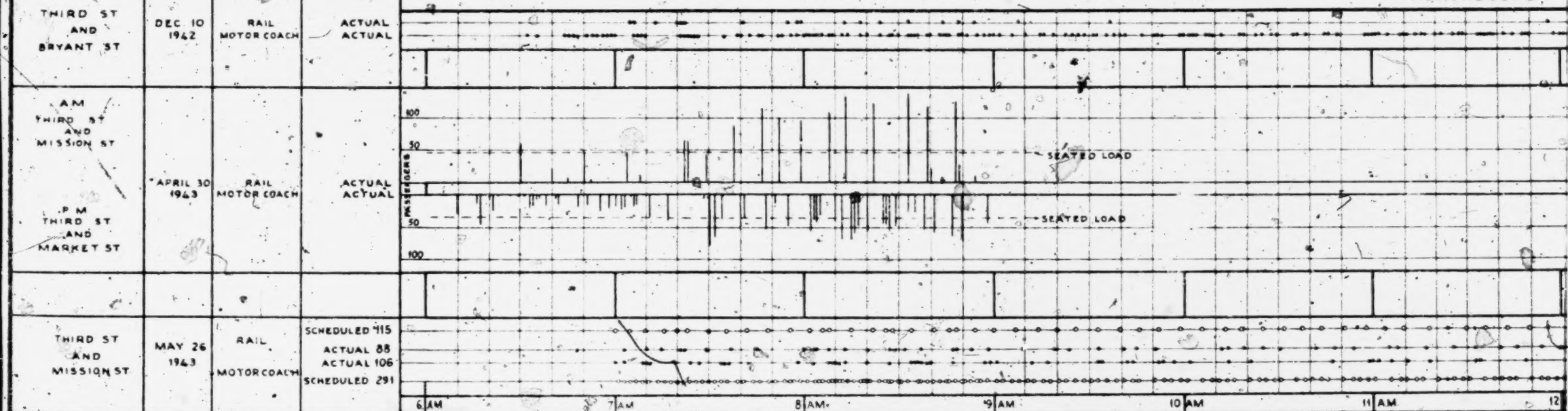
(4) Street car service was extended on the Third Street line from the Southern Pacific Depot at Third and Townsend Street to Mariposa Street to provide transportation to employes of the Bethlehem Steel Company (Union Iron Works).

(5) A cross-town motor coach line was established from 26th and Castro Streets to the Bethlehem Steel Company (Union Iron Works) from 26th and Castro via 26th, Guerrero, Army, Third Street.

SOUTHBOUND

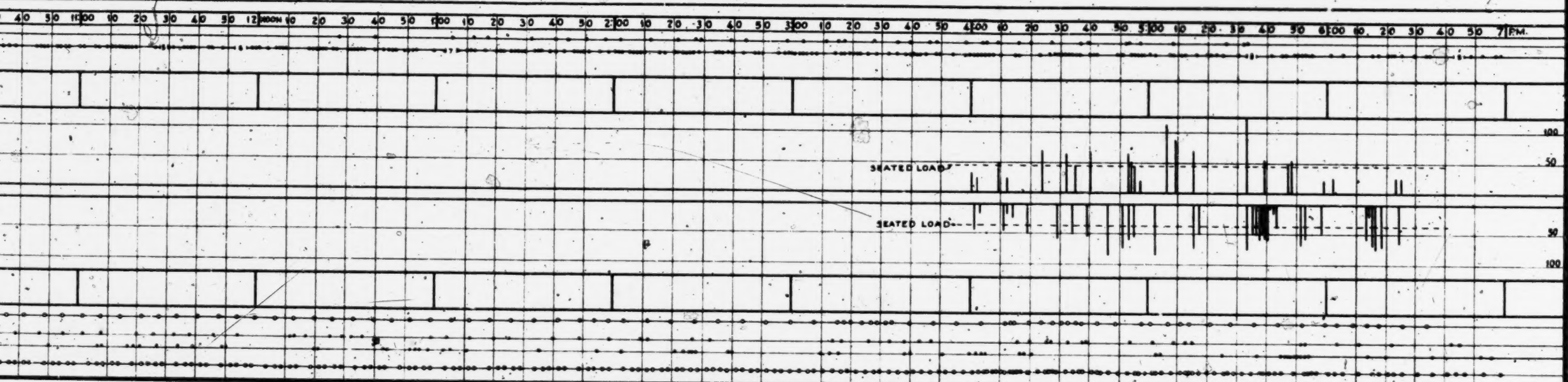


NORTHBOUND

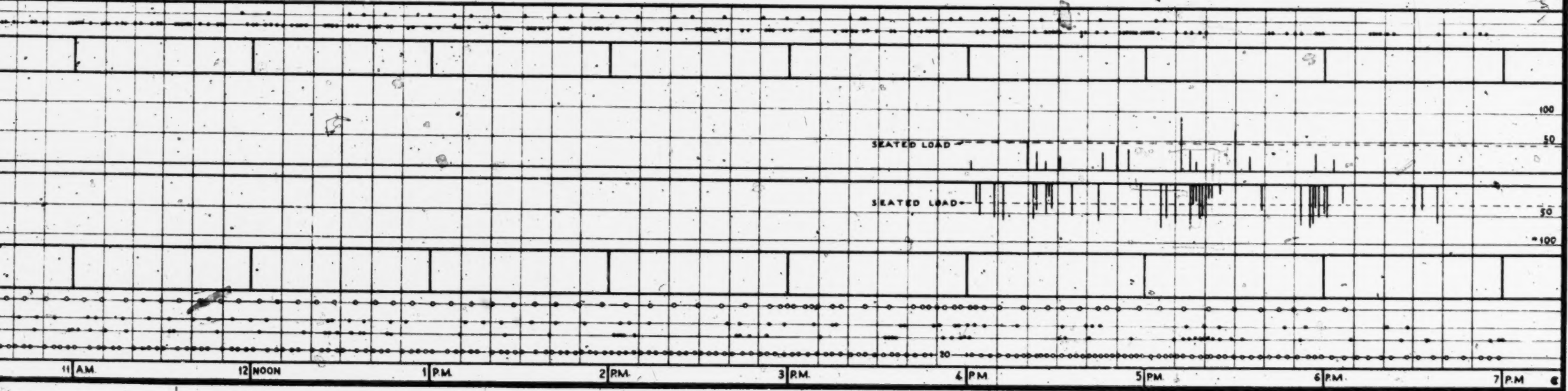


MARKET STREET RAILWAY
THIRD ST AND KEARNY ST. OPERATION
COMPARISON OF ACTUAL PERFORMANCE AS COMPARED WITH
OPERATING SCHEDULES AND LOAD CHARACTERISTICS

SOUTHBOUND TRIPS



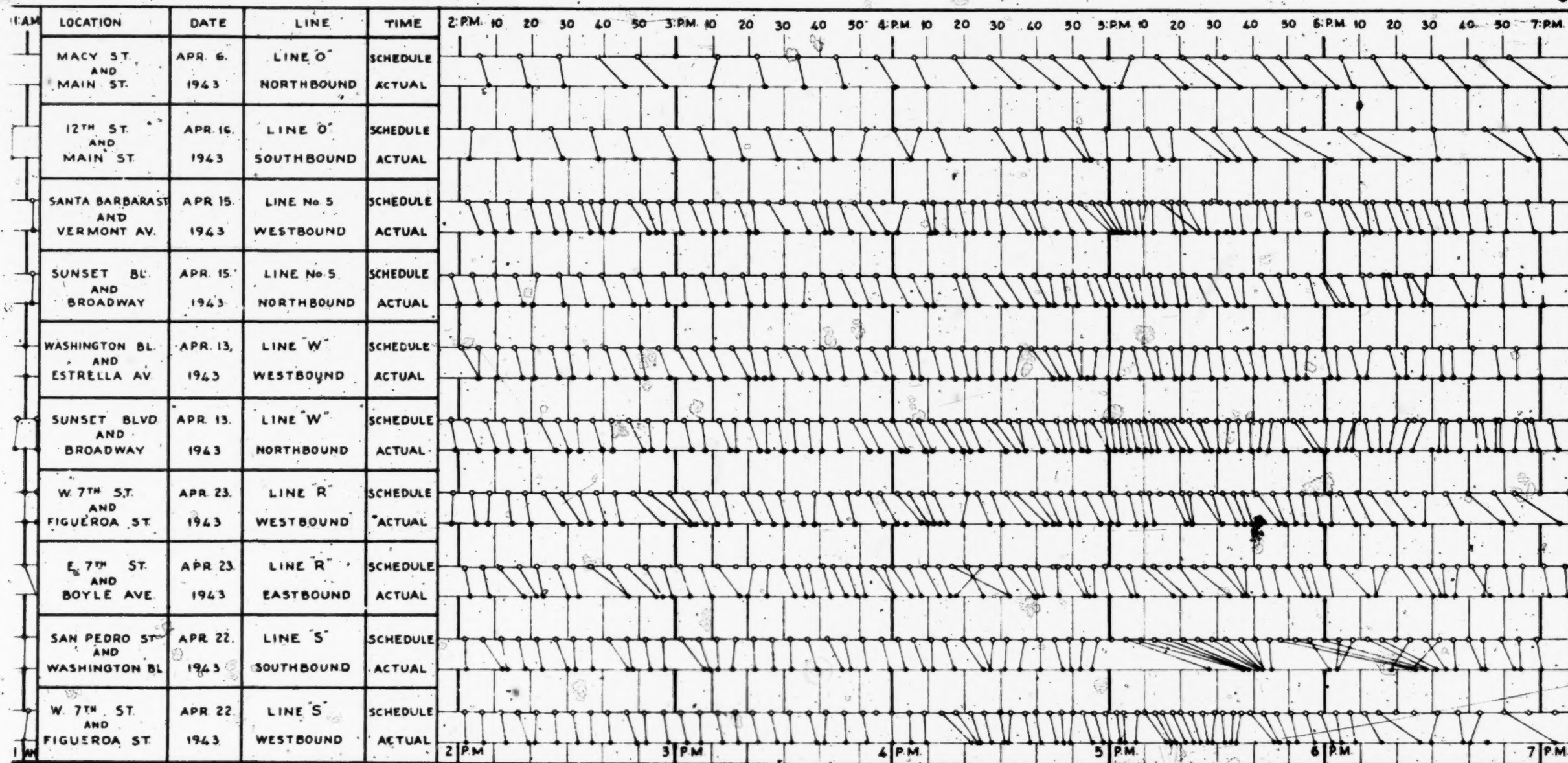
NORTHBOUND TRIPS



LOCATION	DATE	LINE	TIME	7AM 10 20 30 40 50 8AM 10 20 30 40 50 9AM 10 20 30 40 50 10AM 10 20 30 40 50 11AM	LOCATION
MACY ST. AND MAIN ST.	APR 6 1943	LINE "O" SOUTHBOUND	SCHEDULE ACTUAL		MACY ST. AND MAIN ST.
12TH ST. AND MAIN ST.	APR 16 1943	LINE "O" NORTHBOUND	SCHEDULE ACTUAL		12TH ST. AND MAIN ST.
SANTA BARBARA ST. AND VERMONT AVE.	APR 15, 1943	LINE No. 5 EASTBOUND	SCHEDULE ACTUAL		SANTA BARBARA ST. AND VERMONT AV.
SUNSET BLVD. AND BROADWAY	APR 15, 1943	LINE No. 5 SOUTHBOUND	SCHEDULE ACTUAL		SUNSET BL. AND BROADWAY
WASHINGTON BLVD. AND ESTRELLA AV.	APR. 13, 1943	LINE "W" EASTBOUND	SCHEDULE ACTUAL		WASHINGTON BL. AND ESTRELLA AV.
SUNSET BLVD. AND BROADWAY	APR. 13, 1943	LINE "W" SOUTHBOUND	SCHEDULE ACTUAL		SUNSET BLVD. AND BROADWAY
W. 7TH ST. AND FIGUEROA ST.	APR 23, 1943	LINE "R" EASTBOUND	SCHEDULE ACTUAL		W. 7TH ST. AND FIGUEROA ST.
E. 7TH ST. AND BOYLE AVE.	APR 23, 1943	LINE "R" WESTBOUND	SCHEDULE ACTUAL		E. 7TH ST. AND BOYLE AVE.
SAN PEDRO ST. AND WASHINGTON BL.	APR 22 1943	LINE "S" NORTHBOUND	SCHEDULE ACTUAL		SAN PEDRO ST. AND WASHINGTON BL.
W 7TH ST. AND FIGUEROA ST.	APR 22 1943	LINE "S" EASTBOUND	SCHEDULE ACTUAL		W 7TH ST. AND FIGUEROA ST.

LOS ANGELES RAILWAY CORP.

CHART SHOWING ACTUAL PERFORMANCE
AS COMPARED WITH OPERATING SCHEDULES
ON DATES AND AT LOCATIONS SHOWN



[fols. 460-461]

APP. CASE 4680

EXHIBIT No. 17

Witness: J. G. Hunter.

Date: July 15/1943.

Com. or Ex. ———.

CALIFORNIA RAILROAD COMMISSION, TRANSPORTATION DEPARTMENT

REPORT DEALING WITH SERVICE ON MARKET STREET RAILWAY

Case 4680

J. G. Hunter, Assistant Director of Transportation
and Chief Engineer.

San Francisco, July 15, 1943.

[fol. 462]

San Francisco, California.

July 12, 1943.

Case 4680

Conclusions and Recommendations Looking Toward a Betterment in the Service Provided by the Market Street Railway Under War time Conditions, in Connection with the Investigation by the Commission on its Own Motion In Case 4680. To Be Presented at the Hearing in San Francisco, July 15, 1943.

General

These observations are made in the light of prevailing war time conditions with the attending limitations of man power and facilities. If the matter were considered, under what might be termed normal conditions, the entire approach of this study would be materially changed.

The public cannot expect the same standard of service under war time conditions as under normal conditions. It is apparent, the public realizes this situation and accepts it with little criticism in so far as our records show and I think it is prepared to meet an even lower standard of service if war conditions require. On the other hand, it is the obligation of all carriers to exert every reasonable effort to provide the best service within their power with the limited

man power and facilities available. Although this report does not attempt to analyze the rate situation, in the last analysis, service is an important item to consider in justifying a rate structure.

While this investigation is directed to the operations of the Market Street Railway with the objective of providing the public served by that carrier the best transportation that can reasonably be afforded under prevailing conditions, [fol. 463] such service cannot be fully considered without giving recognition to the interlocking effect of the other local street transportation agencies operating in San Francisco, particularly that of the Municipal Railway, not under the Commission's jurisdiction, which now transports approximately the same volume of traffic as does the Market Street Railway. This for the reason the carriers are competitive to a certain extent and the further fact that the rate structures are different for the four local transportation agencies serving San Francisco.

The local transportation problem would be materially simplified if the city were served by one transportation agency under one standard of service and one fare structure which would provide for a universal transfer. If the properties are not brought under one ownership, there should be effected some operating agreement between the Market Street Railway and Municipal System to permit of the greatest use of the available facilities in the interest of the war effort and providing this City the best public transportation service under prevailing conditions.

Conclusions

Based upon the foregoing premises, our study supports the conclusion that *the service on the Market Street Railway, should be improved.* This conclusion is based upon [fol. 464] the record in that the available street cars and

Carrier	Present Base Fare
Jitney Buses	10¢
Market Street Railway	7¢
California Street Cable	6¢
Municipal Railway	5¢

With limited transfer privileges between the rail carriers.

buses are, in many instances and particularly during times of peak travel, overcrowded and the service is irregular. The overcrowded condition is accentuated by the equipment not being operated on schedule.

Our traffic check, as presented by Mr. Hall, shows the cars and buses often operate with an irregular spacing. In other words, there will be long intervals between cars and buses followed by grouping of units. In some cases it may be noted that units are actually operated ahead of schedule.

Service

In developing a service plan for the Market Street Railway the first step is to lay out route operating schedules which are thereafter referred to the local labor representative and with his approval, with respect to conforming with the labor agreement provisions, the schedules are then turned over to the respective Division Superintendents. There are five electric rail divisions, one cable car division and one bus division in the Market Street System. The platform men and women in the division bid on the various runs. Their choice is given preference in accordance with their seniority. It is the duty of the Division Dispatcher to work out a program of operation in conformity with the above program with the available help. At the present time, considerable difficulty is being experienced in filling all the schedules due to man power shortage. Table No. 1 of Exhibit No. 11 shows that during the year ending April 30, 1943, the percentage of motor coaches and street cars which failed to operate in accordance with the schedule requirements, steadily increased from 0 to 5.7 per [fol. 465] cent. In comparing this record with that of the Los Angeles Railway and Municipal System, we find the Municipal operation meets its schedule with few exceptions while the Los Angeles Railway's failures increased from 0.8 per cent to 4.5 per cent. The better record of the Municipal System as compared to that of the Market Street Railway may be explained in part, at least, by the fact the rate of pay is slightly higher and other attractive labor benefits as shown on table VII of Exhibit No. 11.

Each division has a number of inspectors whose duty it is to supervise the operations in the field.

The following tabulation shows certain data as to the Field Inspector's Account for four major street car systems in the state.

Based upon maximum evening peak street car operations				
	L.A. Ry.	Key System	Muni.	Mkt.
Scheduled street cars in service	650	162	225	316
Total number Field Inspectors	22	6	7	20
Average number of cars in service per Field Inspector on duty	30	27	32	16
Field Inspectors rate of pay (Per Month)	\$215	\$210-\$225	\$200-\$240	\$180
Hours of service	8 to 9	8	8	8
Overtime	One and one half time over 9 hrs.	None	None	None

The foregoing table shows that of this group of carriers, [fol. 466] Market Street Railway maintains the greater number of inspectors per unit of street cars. However, it should be pointed out that the Market Street operations are rather complicated with respect to maintaining proper spacing of the equipment due to the fact many lines operate over the Market Street tracks with different diverging points. Also, there are many cross-town lines through the business center of the city. This network of tracks through a congested area presents a situation where a tie-up on one line very often seriously interferes with a considerable portion of the company's service. An important part of this service is transportation to the defense industries which requires a concentration of street car and bus units to move the workers at the time of shift changes. The company has been called upon to provide a special service to these industries some times at the expense of the service to the general public and in so far as our records show there are no complaints filed with us as to the service afforded the public in traveling to and from the defense industries.

The results of our tests show that due to serious grouping of cars and buses, further consideration should be given to improving the inspector service.

The results of performance checks presented by Mr. Hall on Charts Nos. I to VI inclusive, Exhibit No. 11, justify the conclusion that the off schedule performance is greater with the Market Street system than is the case with either the Municipal or Los Angeles Railway's operations. This situation can be materially improved by joint action of the [fol. 467] carrier and the city officials of San Francisco and the traveling public. It is within the company's power to improve the service by appropriate schedules and compliance therewith, particularly the spacing of cars and buses.

To improve the man power situation, the Market Street Railway is now spending considerable money in advertising for help by means of the press, radio and bulkhead posters in street cars as well as offering a bonus to its employees who interest men or women in accepting employment with the company.

The company's records show the following expenditures in the interest of attracting new employees to the system.

Newspaper Advertisements	Cost
July 17, 1942 to July 10, 1943 a total of 275 issues appearing in 4 daily San Francisco papers	\$7,500.00
Radio	
May to June, 1943 K.G.O. Blue Network 35 spot announcements	274.00
Bulkhead Posters in Street Cars of the Company	
This form of advertising has been employed continuously during the past year	Nominal Printing of cards only
Employee Bonus Plan	
40 New Employees \$10	400.00
Total	<u>\$8,174.00</u>

[fol. 468] The city can contribute to better service by eliminating unnecessary stops in the business center of the city, particularly along Market Street, which involve rearranging of traffic signals and cross-walks; also, regulate and enforce parking restrictions, particularly double parking. On the other hand, the public can materially assist in arranging to travel, in so far as practical, during off peak travel times.

The service to the city as a whole would be improved if the facilities of the Market Street Railway and Municipal lines were consolidated or at least an operating agreement existed whereby the available facilities of both systems could be used to the best advantage of the city service particularly at this time when there is such an urgent need for transportation service and little available new facilities.

If such an agreement existed the four tracks along Market Street could be used to a greater advantage. Our checks show the following record of cars passing given points on Market Street: Date of check Monday, May 24, 1943.

[fol. 469]

Time	Location & Direction of Travel	Number of Cars	
		Municipal	Market
4:30 to 5:30 p.m.	Outbound west of Sansome Street	115	82
4:30 to 5:30 p.m.	Outbound east of Sansome Street	146	82
7:30 to 8:30 a.m.	Inbound at 6th Street	73	64

(Table IX, Ex. —)

The rates of travel on the two systems were observed to be as follows: Check taken May 24, 1943 between 6th and Sansome Streets on Market Street.

Line	Rate of Travel	
	7:30 to 8:30 a.m.	4:30 to 5:30 p.m.
Market Street Railway	7.77 MPH	6.37 MPH
Municipal Railway	7.36 MPH	5.41 MPH

(Table X, Ex. —)

Two-man Car Ordinance

The City of San Francisco now has in effect an ordinance which prohibits the operations of street cars over city streets with one man.

At one time the Market Street Railway did operate a number of its lines with one-man street cars but was prevented from continuing the practice by the city ordinance.

[fol. 470] The Market Street Railway now has 132 cars equipped for one-man or two-man operation. Most of these cars are now in service carrying both a motorman and conductor. During this time of severe manpower shortage the situation would be materially relieved if the company were permitted to operate certain of its lines with one-man cars particularly those which do not operate over the Market Street tracks. With such operation, consideration should be given to maintaining ground loaders at the heavier loading points.

Net Operating Income

Data contained in this record shows that on the average during the 21 year period from 1922 to 1942, inc., the annual

net operating income of the Market Street Railway has amounted to \$878,000. The amount has ranged from a high of \$2,038,000 in 1923 to a loss of \$40,000 in 1938. For the year ending May 31, 1943 the net operating income amounted to \$1,266,000. It can reasonably be assumed that for the duration of the present hostilities and for a reasonable period thereafter the net earnings of this carrier will be materially in excess of the average for the 21 year period referred to above. Coincident with this future high earning period the service to the public will suffer from lack of man power to operate and maintain a sufficient number of cars and buses to meet traffic requirements, use of old equipment and deferred maintenance. Under these [fol.471] conditions it seems reasonable to require the Market Street Railway to impound some of its net operating income to provide the public with better service in the future. In this way the company will be in a position to pick up deferred maintenance when manpower and materials are available. The plan should also have a material beneficial effect in the way of purchasing new and modern equipment.

Recommendations

1. Market Street Railway should provide better service by improved field supervision, so that when cars or buses get off schedule and operate in close proximity with the resulting long intervals between units, some of them should be turned back even at the expense of discommoding some passengers in the interest of better overall service on the system.
2. Man Power situation on the Market Street Railway could be relieved somewhat during the war emergency period by suspending the two-man car ordinance of the City and County of San Francisco which would permit of running cars with one man under favorable conditions with due consideration to maintaining ground loaders at heavy traffic points. This would also apply to the Municipal operations if they elected to exercise such authority.
3. With the release of man power, additional cars and buses should be placed in service.

[fol.472] 4. Operation should be speeded up by increasing the skip-stop program in the city which

would have the effect of improving the over all service at the expense of some additional walking for a limited group of passengers.

5. An operating agreement should be entered into between the Market Street Railway and Municipal system which would permit of the best use of available facilities.
6. The value of the service should be in keeping with the rates.
7. Market Street Railway Company should place in a special fund its gross revenues less the amounts necessary to defray.

Operating expenses—exclusive of depreciation
Taxes
Interest
Sinking fund payments
Equipment notes

Withdrawals from the special fund should be subject to the approval of the Commission.

J. G. Hunter, Assistant Director of Transportation
and Chief Engineer.

(Here follows 1 photolithograph, side folio 473)

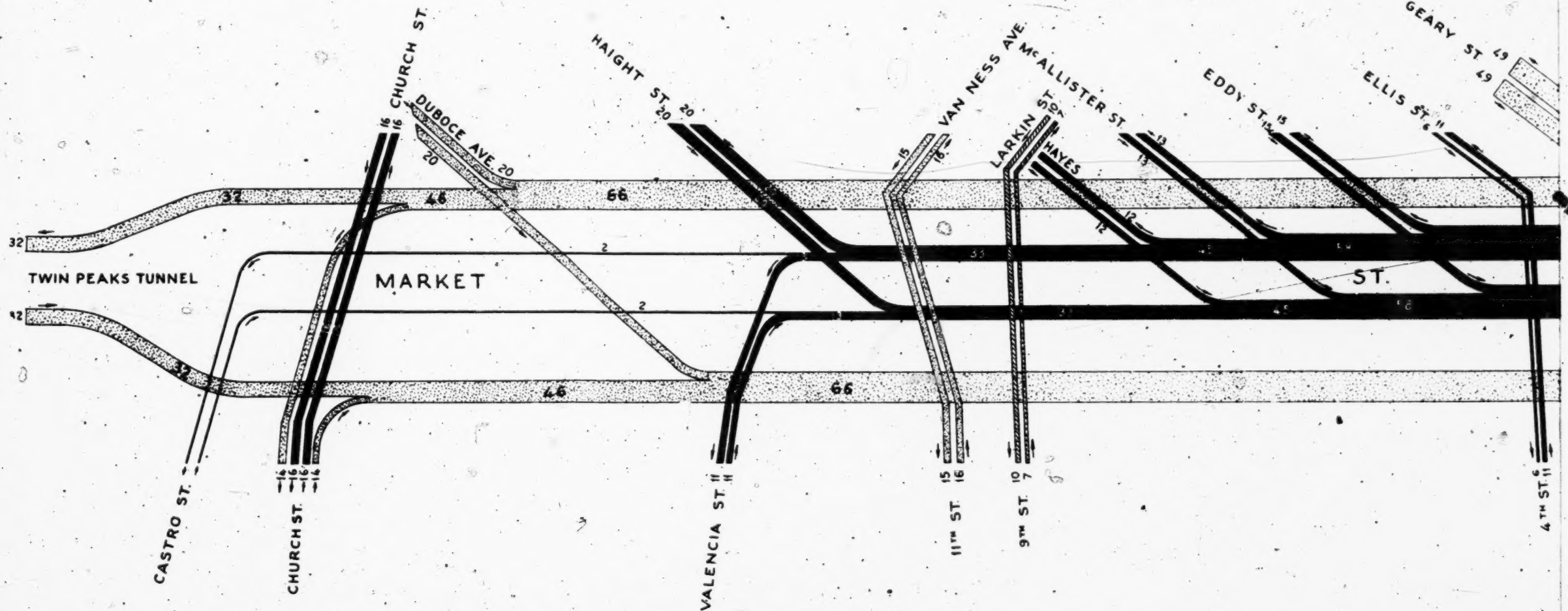
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SAN FRAN

Case 4680
Railroad Commission, California
Hall Exhibit No. 18
Filed 9-15-43
H. G. Mathewson, Sec'y

SU



TRANSPORTATION DEPARTMENT

MARKET ST. SAN FRANCISCO

TRAFFIC IN MAXIMUM ONE HOUR PERIOD 4:30 P.M. TO 5:30 P.M.

MAY 24TH, 26TH AND 28TH 1943

Case 4680
Exhibit No 18
Witness Hall
Date Sept. 15, 1943
Com or Ex FRH



[fol. 474]

Case No. 4680

MARKET STREET RAILWAY COMPANY'S EXHIBIT No. 19

Hunter, Sept. 15, 1943

United States Internal Revenue Stamps Required by Law Have Been Affixed to Original Counterpart of this Supplemental Indenture on File with Wells Fargo Bank & Union Trust Co., as Trustee, and Have Been Duly Cancelled

Supplemental Indenture

MARKET STREET RAILWAY COMPANY

and

WELLS FARGO BANK & UNION TRUST CO., Trustee

Dated April 1, 1940

Relating to First Mortgage 7% Sinking Fund Gold Bonds

[fol. 475] Mortgage of Chattels and Real Property

This Supplemental Indenture, made and entered into as of the 1st day of April, 1940, by and between Market Street Railway Company, a California corporation, having its principal place of business in the City and County of San Francisco, State of California (hereinafter called the "Company"), party of the first part, and Wells Fargo Bank & Union Trust Co., a California corporation, having its principal place of business in said City and County and State (hereinafter called "Trustee"), party of the second part;

Witnesseth:

Whereas, by Indenture of First Mortgage dated April 1, 1924, the Company, as party of the first part therein, granted, mortgaged and pledged to the Trustee certain real and other property situated in the State of California, and more particularly described in said Indenture of First Mortgage (some of which property has been released from the lien thereof in accordance with the provisions thereof), which said Indenture was duly recorded in the office of the County Recorder of the City and County of San Fran-

cisco in Volume 866 of Official Records at page 12, and in the office of the County Recorder of San Mateo County in Liber 112 of Official Records at page 4, and in the office of the County Recorder of Humboldt County in Book 87 of Mortgages at page 28, and re-recorded in the office of the County Recorder of the City and County of San Francisco in Liber 2848 of Official Records at page 267 (said Indenture of First Mortgage being hereinafter referred to as the "Indenture"), for the purpose of securing an authorized issue of First Mortgage 7% Sinking Fund Gold Bonds, due April 1, 1940; Series A (said Bonds being hereinafter referred to as the "Bonds"); and

Whereas, Bonds in the principal amount of \$15,000,000 were authorized to be issued under said Indenture, of which \$13,000,000 principal amount were issued, and as of the date hereof \$4,618,000 are outstanding; and

Whereas, as of the date hereof, the holders of \$3,942,000 in principal amount of said Bonds, constituting more than 85% of said Bonds outstanding, became parties to and deposited their Bonds under and in accordance with that certain "Plan for Extension of Maturity, Reduction of Interest, and Change of Sinking Fund Provisions of First Mortgage 7% Sinking Fund Gold Bonds, Series A, of Market Street Railway Company, Issued Under Indenture of First Mortgage dated April 1, 1924, to Wells Fargo Bank & Union Trust Co., as Trustee", approved by Decisions numbered 32467 and 32499 of the Railroad Commission of the State of California; and

[fol. 475a] Whereas, said Plan became effective on March 30, 1940, in accordance with the terms thereof;

Now, Therefore, it is agreed by the parties hereto, on behalf of the holders of said Bonds who have and may hereafter become parties to said Plan, that notwithstanding anything to the contrary in said Indenture, said Bonds and said coupons appertaining;

That effective April 1, 1940,—

(1) The maturity date of said Bonds shall be extended to April 1, 1945, and said Bonds shall be payable on April 1, 1945.

(2) That the interest rate upon said Bonds shall be 5% per annum payable quarterly on the first days of January, April, July and October of each year commencing July 1, 1940, and that there shall be attached to each of said

Bonds interest coupons covering such extended maturity authenticated by the facsimile signature of the Treasurer of the Company, each bearing appropriate number, providing for the payment of interest on the corresponding Bond at the rate of 5% per annum, payable quarterly on the first days of January, April, July and October of each year commencing July 1, 1940, substantially in the following form:

"On the first day of —, 19— (unless the Bond hereinafter mentioned shall have been called for previous redemption, and provision made for the payment thereof) Market Street Railway Company will pay to the bearer hereof, upon the surrender hereof, at the option of the bearer hereof, either at the office of Ladenburg, Thalmann & Co., or their successors, fiscal agents of Market Street Railway Company, in the Borough of Manhattan, City of New York, or at the office of the Trustee, City and County of San Francisco, \$—— in lawful money of the United States of America, as provided in the Indenture, as amended, under which said Bond is issued, being the quarterly interest then due on its First Mortgage Sinking Fund Bond, Series A (as modified) number.——.

— — — Treasurer"

(3) That Section 29 of Article Four of said Indenture is hereby amended to read as follows:

"Section 29. That the Company covenants and agrees that so long as any Bonds of Series A are outstanding, that commencing July 1, 1940, the Company will pay on the first days of January, April, July and October of each year an amount equal to $\frac{1}{2}$ of 1% of the principal amount of Bonds outstanding as of March 30, 1940, to Ladenburg, Thalmann & Co., or their successors (hereinafter [fol. 476] styled the 'Fiscal Agents') or to the Trustee for their account, in lawful money of the United States of America. The payments thus to be made are hereinafter referred to as 'Sinking Fund Payments', and, together with all other moneys required to be paid into the Sinking Fund by the other provisions of this Indenture, as

amended, shall be applied and used by the Fiscal Agents from time to time in accordance with the provisions of this Article Four. The Sinking Fund Payments and all other moneys required to be paid into the Sinking Fund in accordance with the provisions of this Indenture, as amended, are hereinafter collectively styled 'Sinking Fund Moneys'."

(4) That any and all existing defaults of the Company under the Sinking Fund provisions of Section 33 of Article Four of said Indenture are hereby waived, and the Trustee shall cancel the Bonds outstanding in said Sinking Fund.

(5) Section 33 of Article Four of Said Indenture is amended to read as follows:

"Section 33. That all Bonds and coupons purchased, redeemed or otherwise acquired by or delivered to the Trustee for the Sinking Fund, out of Sinking Fund moneys, paid subsequent to July 1, 1940, pursuant to any provision of this Indenture, as amended, except the special Sinking Fund Bonds, shall be kept alive and uncanceled by the Trustee as long as any Bonds are outstanding, and said Bonds and Coupons shall be stamped 'Not negotiable, property of the Sinking Fund' and the interest thereon shall be collected by the Trustee and paid to the Fiscal Agents and become a part of the Sinking Fund Moneys, and applied as aforesaid. Bonds uncanceled by the Trustee in the Sinking Fund shall not be deemed to be outstanding Bonds under any other provision of this Indenture, as amended."

(6) That the Company may redeem all Bonds or any thereof on any interest payment date at 100% of the principal amount thereof plus accrued interest, in the manner and upon the terms provided in Article Five of the Indenture, except as modified hereunder, upon 30 days' notice published in a daily newspaper of general circulation in the Borough of Manhattan, City of New York, and in a daily newspaper of general circulation in the City and County of San Francisco, California, or notice otherwise given as and upon the terms provided in Article Five of the Indenture.

(7) The Company will not pay any federal tax due on the interest on said Bonds, as extended.

(8) The Trustee will have stamped or endorsed on each Bond a statement substantially as follows:

"The rights of the holder of this Bond are subject to the provisions of a certain Supplemental Indenture dated as of April 1, 1940, between the Company and [fol. 476a] the Trustee on file with the Trustee, which Supplemental Indenture includes a provision for the extension of the maturity of this Bond to April 1, 1945, the reduction of the interest rate to 5% per annum, and the change of the sinking fund provisions thereof."

(9) The Company covenants and agrees not to make any payment on account of principal or interest on its indebtedness to Standard Gas & Electric Company existing on March 30, 1940, until the Bonds shall have been paid in full, and interest on said indebtedness shall accrue at not more than 4% per annum.

(10) The Company covenants and agrees not to make any principal payments on its bank loans existing on March 30, 1940, except after the Bond Sinking Fund payments have been made as they become currently due, and then only to an amount equal to 2% of the principal of said loans annually, except as provided in paragraph (11) hereof.

(11) The Company covenants and agrees that, after meeting Sinking Fund provisions, as above provided, to use its remaining cash only for capital expenditures and working capital, and any amount over and above such reasonable requirements shall be used as an additional sinking fund for the Bonds and bank loans pro-rata to the principal amount of each.

(12) The Company covenants that it will duly and punctually pay the principal of and interest on the Bonds, as extended, on the dates and at the places and in the manner provided in said Bonds, as extended, and in the coupons appertaining, according to the true intent and meaning thereof.

(13) That the Indenture and all the terms, conditions, covenants, promises and agreements thereof and rights

and remedies therein provided, except as modified hereunder, shall be and remain in full force and effect for the benefit of, and shall apply to, the holders of the Bonds, as extended, and coupons appertaining, and in the event the Company shall make a default in any of its agreements hereunder, said default shall be deemed to be included within the appropriate subdivision of the "Events of Default" referred to in Section 47 of Article Seven of the Indenture, and shall constitute an event of default under said Indenture.

(14) It is understood and agreed that the Trustee in executing this Supplemental Indenture only on behalf of the holders of Bonds who have become and may hereafter become parties to the said Plan, and the Trustee makes no representation as to the validity of this Supplemental Indenture or any of its terms or as to whether or not the same shall be binding upon the holders of said Bonds who have not become parties to the Plan.

[fol. 476b] (15) In order to facilitate the recording of this Supplemental Indenture, the same may be executed simultaneously in two or more counterparts, each of which is hereby declared an original, and they together shall constitute one and the same instrument.

In witness whereof, the undersigned have caused these presents to be executed by their officers thereunto duly authorized as of the day and year first above written.

Market Street Railway Company, by Samuel Kahn, President; by E. M. Massey, Secretary; First Party. (Corporate Seal.) Wells Fargo Bank & Union Trust Co., Trustee, by F. J. Brickwedel, Vice President, by Grover Grady, Trust Officer; Second Party. (Corporate Seal.)

[fol. 476c] STATE OF CALIFORNIA,

City and County of San Francisco, ss:

On this 10th day of April, in the year 1940, before me, Nancy Everett, a Notary Public in and for said City and County, and State, personally appeared Samuel Kahn, known to me to be the President, and E. M. Massey, known to me to be the Secretary, of Market Street Railway Company, a California corporation, the corporation that executed the within instrument, and known to me to be the persons who

executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Nancy Everett, Notary Public, in and for the City and County of San Francisco, State of California.
My Commission Expires July 27, 1942. (Notarial Seal.)

[fol. 477] STATE OF CALIFORNIA,

City and County of San Francisco, ss:

On this 10th day of April, in the year 1940, before me, Nina C. Putnam, a Notary Public in and for said City and County, and State, personally appeared F. J. Brickwedel, known to me to be the Vice President, and Grover Grady, known to me to be the Trust Officer of Wells Fargo Bank & Union Trust Co., a California corporation, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the same, as trustee.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Nina C. Putnam, Notary Public, in and for the City and County of San Francisco, State of California.
My Commission Expires April 1, 1943. (Notarial Seal.)

Recording Data

Recorded in the office of the Recorder of the City and County of San Francisco on April 12, 1940, in Book No. 3599 of Official Records at Page 1.

Recorded in the office of the Recorder of the County of San Mateo on April 12, 1940, in Book No. 885 of Official Records at Page 444.

Recorded in the office of the Recorder of Humboldt County on April 12, 1940, in Book 107 of Mortgages at Page 90.

[fol. 478] CASE 4680 KAHN EXHIBIT No. 20 Filed 9-15-43

Changes Proposed by Division 1004, A. A. of S. E. R. and M. C. E. of A. In the Agreement with Market Street Railway Company.

A

Section 1 of the current agreement shall be changed by amending the third paragraph thereof to read as follows:

The Company shall choose one arbitrator and the Association shall choose one arbitrator and the two arbitrators thus chosen shall select a third arbitrator who shall act as Chairman of the Board. Should the two arbitrators be unable to agree on a third arbitrator within ten (10) days, he shall be appointed by the Conciliation Service of the United States Department of Labor. The decision of a majority of the Board presented in writing to the Company and the Association shall be final and binding upon both parties to this Agreement.

[fol. 479]

B

Section 2 (a) shall be amended to read as follows:

All platform men assigned to regular runs shall be compensated for at least eight (8) hours plus allowances for each day worked. Runs are to be completed within the ratio defined by Clause (c). Six (6) days shall constitute a week's work and all platform men assigned to regular runs shall be guaranteed five (5) days work at straight time and a sixth day work at overtime each week.

[fol. 480]

C

Section 2 (b) shall be amended to read as follows:

Overtime at the rate of time and one-half shall be paid for all work in excess of eight (8) hours per day, for all work performed in excess of a spread of ten (10) hours per day, and for all work in excess of forty (40) hours per week. If an employee is required to work in addition to his regular run he shall be paid overtime for work at the rate of time and one-half.

If an employee upon completion of his regular day's work is called upon to take out a regular schedule run, or portion thereof, he shall be paid overtime for this ad-

ditional work at the rate of time and one-half. Overtime will be paid from the completion of his regular day's work to completion of additional work.

The above applies to cases where relief is made on the road as well as where cars or coaches are turned in to the barn.

Should an employee be called upon, upon completion of his regular day's work, to take out a tripper he shall be paid at overtime rate with a minimum of four (4) hours time allowed.

[fol. 481]

D

Section 2 (c) shall be amended to read as follows:

Forty-five per cent (45%) of all runs shall be straight runs. The remaining fifty-five per cent (55%) must not have more than one break and be completed within ten (10) hours.

The above ratios shall be applied separately to each division each day.

As many runs as the service permits shall be day runs. A day run is defined as a run completed by 6:30 p. m.

Any part of a regular run consuming less than two hours' time shall be paid a minimum of two hours.

All trippers shall be paid a minimum of four (4) hours straight time. Tripper is defined as one continuous piece of work.

No extra man shall be allowed to work more than one tripper each week.

The representatives of the Association shall be permitted to examine all time-tables and, along with the Company's representative, shall make out the time-tables. The Association representatives shall be permitted to make suggestions for standardization of running time, which shall be applied subject to the approval of the Company.

All time-tables shall show a summary of lapsed time of runs.

[fol. 482]

E

Section 2 (e) shall be amended to read as follows:

Effective June 1, 1943, the hourly rate of pay for electric car motormen and conductors shall be * * * \$1.00 per

hour and the hourly rate of pay for trolley coach operators, bus operators and cable car platform men shall be \$.10 per hour.

There shall be no lay-offs of platform men because of additions to bus and trolley coach operations.

Motormen, conductors, gripmen and operators breaking in students shall receive twenty-five cents (25¢) per hour extra while so engaged. Qualified men riding on line to become acquainted with the same are not to be considered as breaking in, but the instructor shall receive twenty-five cents (25¢) per hour extra on the San Mateo line in such case.

Bus operators' and chauffeurs' licenses shall be furnished and paid for by the Company.

[fol. 483]

F

Section 2 (f) shall be amended to read as follows:

All platform men shall be allowed ten (10) minutes and all bus operators shall be allowed fifteen (15) minutes before starting work, in order that they may get the car or bus in readiness. Motormen, gripmen and operators shall be allowed five (5) minutes for putting up the car or bus at night, if relief from duty is not made at the entrance.

[fol. 484]

G

Section 2 (g) shall be amended to read as follows:

Conductors and operators shall be allowed fifteen (15) minutes for making up the day's work and turning it in. Conductors and operators required to make relief on the street shall be allowed five (5) minutes for preparing outfit.

[fol. 485]

H

Section 2 (1) shall be amended by changing the fifth paragraph thereof to read as follows:

All employees breaking in and receiving instructions on electric car, bus, trolley coach or cable car shall receive the platform rate of pay during such breaking in period. Regular men having no assigned runs on days that special schedules are used shall be assigned to work in the inverse order of seniority when so qualified and shall be paid at

the rate of time and one-half for time so worked with a minimum of four (4) hours at such overtime rate.

[fol. 486]

I

Section 2 (s) shall be amended to read as follows:

The Company shall furnish all uniforms required.

[fol. 487]

J

Section 2 (z) shall be amended to read as follows:

Assistants to operate the turn-table at Powell and Market Street shall be provided at all times between the hours of 8:00 a. m. and 11:00 p. m.

[fol. 488]

K

Section 3-A (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on Saturday. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

The work week for the watchmen shall be six (6) days, forty-eight (48) hours, and all work in excess of eight (8) hours per day and forty-eight (48) hours per week shall be considered overtime and paid at the rate of time and one-half.

[fol. 489]

L

Section 3-B (b) shall be changed to read as follows:

All employees in the Bus and Truck Garages, Car House Maintenance Department and Cable Machinery Department shall be guaranteed six (6) days, forty-eight (48) hours work each week, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operation so that as many employees as possible may be given full employment throughout the year.

[fol. 490]

M

Section 3-C (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol. 491]

N

Section 3-D (k) shall be changed to read as follows:

Turk Street substation and Bryant Street substation shall have an Assistant Operator on day and afternoon shifts.

Section 3-D (o) shall be eliminated from the Agreement.

[fol. 492]

O

Section 3-E (h) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol. 493]

P

Section 3-F (b) shall be changed to read as follows:

All employees shall be guaranteed six (6) days, forty-eight (48) hours work each week, Monday to Saturday inclusive, unless broken by a legal holiday, with time and one-half pay for work on the sixth day. The Company agrees to conduct its operations so that as many employees as possible be given full employment throughout the year.

[fol. 494]

Q

Section 3-H shall be changed to read as follows:

The following rates of pay shall be paid to all General Shop and Carhouse Employees, Cable Machinery Men, Trackmen and Linemen:

Elkton-Market-Valencia Shops

Effective June 1, 1943

Armature Department

	1st 6 mos.	2nd 6 mos.	There- after
Armature Winder.....	\$1.27½	\$1.32½	\$1.37½
Armature Repairman.....	1.27½	1.32½	1.37½
Liner Fitter.....	1.05	1.10	1.15
Armature Turner.....	1.05	1.10	1.15
Field & Brush Repairman.....	1.05	1.10	1.15
Bander.....	1.05	1.10	1.15
Sander.....	.85	.90	.95
Stripper.....	1.05	1.10	1.15
Material Repairman.....	1.05	1.10	1.15
Electrician.....	1.60	1.65	1.70

Car Building Department

Assistant Foreman—\$13.60 per day			
Pattern Maker.....	1.60	1.65	1.70
Glass Repairman.....	1.40	1.45	1.50
Car Builder.....	1.40	1.45	1.50
Carpenter.....	1.40	1.45	1.50
Mechanic.....	1.40	1.45	1.50
Mill Hand.....	1.40	1.45	1.50
Leather Worker.....	.97	1.02	1.07
Seat Repairman.....	1.40	1.45	1.50

Storekeeper—\$195 a month

Sweeper—\$170 a month

Blacksmith Department

Blacksmith Forger.....	1.35	1.40	1.45
Blacksmith.....	1.35	1.40	1.45
Blacksmith's Helper.....	.90	.95	1.00

[fol. 495]

Machine shop

Assistant Foreman—\$13.60 per day			
Fare Box Repairman.....	\$1.05	\$1.10	\$1.15
Compressor Repairman.....	1.05	1.10	1.15
Machinist.....	1.29	1.34	1.39
Bench Hand.....	1.29	1.34	1.39
Armature Liner Operator.....	1.05	1.10	1.15
Liner Operator.....	1.05	1.10	1.15
Drill Press Operator.....	1.05	1.10	1.15
Radial Press Operator.....	1.05	1.10	1.15
Machine Shop Helper—\$170.00 per mo.			
Bolt Threader.....	1.05	1.10	1.15
Axle Cutter Buffer.....	1.05	1.10	1.15

Overhauling Department

	1st 6 mos.	2nd 6 mos.	There- after
Assistant Foreman—\$9.70 per day			
Pipe Fitter	1.05	1.10	1.15
Sheet Metal Man	1.40	1.45	1.50
Airman	1.05	1.10	1.15
Motorman	1.05		
Drill Press Operator	1.05	1.10	1.15
Babbitter, Center Plates, Punch and Shears	1.05	1.10	1.15
Oiler	1.05	1.10	1.15
Fender Repairman	1.05	1.10	1.15
Truck Repairman	1.05	1.10	1.15
Motor Repairman	1.05	1.10	1.15
Crane Operator	1.05	1.10	1.15
Cleaning Plant Operator	1.05	1.10	1.15
Storekeeper—\$195 a month			
Trolleyman	1.00		

Welding Department

Electric Welder	1.11½	1.16½	1.21½
Acetylene Welder & Burner	1.11½	1.16½	1.21½
Acetylene Welder	1.11½	1.16½	1.21½
Combination Electric Arc, Acetylene Welder and Burner	1.11½	1.16½	1.21½
Electric Welder, Grinder	1.11½	1.16½	1.21½
Acetylene Burner, Welder	1.11½	1.16½	1.21½

[fol. 496]

Wheel Room

Machinists	\$1.29	\$1.34	\$1.39
Wheel Shop Helper	.95	1.00	1.05

Moulding Room

Head Moulder	1.16	1.21	1.26
Moulder	1.16	1.21	1.26

Car Wiring Department

Assistant Foreman—\$9.70 per day			
Controllerman	1.05	1.10	1.15
Car Wireman	1.05	1.10	1.15
Electric Bench	1.05	1.10	1.15

Paint Shop

Assistant Foreman—\$13.60 per day			
Sprayman	1.40	1.45	1.50
Letterer	1.40	1.45	1.50
Brush Hand & Burner	1.40	1.45	1.50
Brush & Putty Hand	1.40	1.45	1.50
Car Cleaner—\$170 a month			

Special Track Building Department

Special Track Builder	1.15	1.20	1.25
Punch and Shear	1.05	1.10	1.15

Miscellaneous

Watchman—\$170 a month

Purchasing & General Storeroom

Automotive Storekeeper—\$230 per month
 General Storekeeper—\$230 per month
 Assistant Storekeeper—\$175 per month
 Laborers—95¢ per hour
 Watchmen—\$170 per month

fol. 497]

Carhouses

Employees of the Carhouses shall be classified as Repairmen, Car Cleaners and Watchmen.

The Repairmen group shall be reclassified according to their principal duties, namely:

Oilers	Controllermen
Air Men	Trouble Shooters
Carpenters	Blacksmiths
Bus Mechanics	Trackless Trolley
Brakemen	Repairmen
Combination Outside	Repairmen General
Shopman and Truck	(night shift)
Driver	Fender Repairmen
Floorman	

It is understood and agreed that any of the employees classified as above outlined shall do any and all classes of repair work when called upon so to do by their immediate superior.

It is understood and agreed that at any time when the principal duties of an employee are changed, his classification as above outlined may likewise be changed.

No carhouse employee shall be forced to transfer from night work to day work, unless the company's methods of handling carhouse maintenance are changed by eliminating entirely maintenance work at night, wrecking service excluded.

Assistant Foreman, Day	\$9.70 per day
Night Foreman	9.70 " "
Garage Foreman	13.24 " "
Assistant Garage Foreman	11.62 " "

	1st Year	2nd Year	There- after
Oilers	\$1.05	\$1.10	\$1.15
Controllermen	1.05	1.10	1.15
Brakemen	1.05	1.10	1.15
Trouble Shooters	1.05	1.10	1.15

[fol. 498]

Carpenters.....	1.40	1.45	1.50
Blacksmiths.....	1.35	1.40	1.45
Brakemen.....	1.05	1.10	1.15
Trackless Trolley Repairmen.....	1.05	1.10	1.15
Combination Outside Shopman and Truck Driver.....	1.05	1.10	1.15
Fender Repairman.....	1.05	1.10	1.15
Repairman General (night shift).....	1.05	1.10	1.15
Floormen.....	1.05	1.10	1.15
Car Cleaners—\$170 per mo.			
Car House Janitors—\$170 per mo.			

	1st Year	2nd Year	3rd Year	There- after
Auto or Bus Mechanics.....	\$.95	\$1.10	\$1.25	\$1.39
Washer of Auto or Bus Engines & Parts—.85 per hr.				
Watchmen—\$170 per mo.				

Cable Machinery Department

	Per Hr.
Channel Man.....	\$1.15
Channel Man's Helper.....	1.00
Grip Repairman.....	1.15
Grip Repairman's Helper.....	1.00
Repairman.....	1.15
Repairman's Helper.....	1.00
Machinist Head.....	1.39
Machinist.....	1.39
Oiler.....	1.15
Pulley Man.....	1.15
Pulley Man's Helper.....	1.00
Ropeman.....	1.39
Ropeman, 2nd class.....	1.05
Ropeman's Helper.....	1.05
Operator.....	\$226.54 per mo.
Operator Helper.....	226.54 per mo.

[fol. 499]

Overhead Lines Department

	1st 6 mos.	2nd 6 mos.	There- after
Leadman.....	\$1.47½	\$1.52½	\$1.57½
Lineman.....	1.47½	1.52½	1.57½
Lineman Truck Driver.....	1.47½	1.52½	1.57½
Shopman.....	1.47½	1.52½	1.57½

Substation Operators

Chief Operators

Turk-Bryant-Downtown.....	\$259.54 per mo.
Geneva-Eighth Ave.....	251.94 per mo.
Millbrae.....	237.34 per mo.

Operators

Turk-Bryant-Downtown.....	\$251.94 per mo.
Geneva-Eighth Ave.....	238.44 per mo.
Millbrae.....	227.64 per mo.

Relief Operators

Turk-Bryant.....	\$251.94 per mo.
Downtown-Eighth Ave.....	251.94 per mo.
Geneva-Millbrae.....	238.44 per mo.

Assistant Operators		
All Substations	\$226.54 per mo.	
Engineering Department		Per Hr.
Trackmen	\$.95	
Laborers .....	.95	
Combination Concrete Cutter-Truck Driver	1.00	
Concrete Cutters	1.00	
Pavers	1.25	
Paving Laborers .....	.95	
Trolleyman	1.00	
Derrick Operators .....	.95	
Motormen	1.05	
Powderman in charge of Quarry .....	.95	
Head Quarryman .....	.95	
fol. 500]		
Asst. Head Quarryman .....	.95	
Quarryman .....	.95	
able Utility Men .....	.95	
Electric Welders	1.01 1/2	
Track Grinders	1.01 1/2	
Burner	1.01 1/2	
Stility Man .....	.95	
Storekeeper	175.00 per mo.	
Switch repairman	1.01 1/2	
Combination Switch Repairman-Truck Driver	1.01 1/2	
Track Walker .....	.95	
Watchman	170.00 per mo.	
lot Inspector .....	.95	
Bonder	1.01 1/2	
Combination Bonder Helper-Truck Driver	1.01 1/2	
Oilers .....	.95	
Thermit Welders	1.16	
Thermit Welder Moulder	1.16	
Flagmen .....	.95	
Guard on Money Truck	1.01 1/2	
Driver on Money Truck	1.01 1/2	

[fol. 501] R
Section 3-I shall be eliminated.

[fol. 502] S

Section 4 (i) shall be changed by adding the following:

All employees shall be allowed eight (8) hours rest after completing a day's work, or shall be paid at the rate of time and one-half for all time worked prior to lapse of eight (8) hours.

[fol. 503] T

Section 4 shall be changed so that Subsection (m) shall read as follows:

Any employee in the service of the Company for a period of twelve (12) months shall receive two (2) weeks vacation

with twelve (12) days pay, except monthly rated employees who shall receive two (2) weeks vacation with one-half ($\frac{1}{2}$) months pay. Vacation period shall be from January 1 to December 31. Seniority shall prevail in the selection of vacation periods.

[fol. 504]

U

Section 4 shall be further amended to eliminate subsection (n) thereof and to substitute therefor the following new subsection (n):

Vacation Rules:

1. The present block system governing vacations for platform men and bus operators shall be maintained.

2. Platform men and bus operators shall select vacations according to seniority immediately after the general sign-up is completed and runs are posted.

3. During the year at any further general sign-up all platform men and bus operators who have not taken vacations shall re-sign for same.

4. All miscellaneous employees shall select vacations according to seniority during the month of December of each year for vacations during the following year.

5. All employees shall receive full vacation pay at the time their vacation starts. Vacation pay shall be based upon an eight (8) hour day at employee's regular rate of pay.

6. The length of service attained at the time an employee starts his vacation shall determine the vacation rights to which such employee is entitled.

7. Employees laid off, resigning, discharged, drafted or leaving the Company to join the military service, or leaving on sick leave, shall receive pay for vacation due them in addition to pro-rata pay for vacation earned in the current year.

[fol. 505]

V

A new Section 5 shall be incorporated in the Agreement, reading as follows:

Instruction on Coach Operation:

1. All jobs as instructors in coach training provided for below, and as instructors in breaking in students as coach operators shall be open for bid by posting notices advising employees of said positions. Ability being sufficient, seniority shall govern selection of men for these jobs.

2. All students in coach operation shall be obliged to undertake a course of instruction in the shops of the company to learn the mechanical operations of the bus. Such course to be mutually agreed upon by the parties hereto.

3. After completion of the shop course students shall be entitled to not less than 30 hours of driving instruction before taking final driving test. At any time during the 30-hour period should the student's instructor recommend that he be given the final driving test he shall have the opportunity to do so. Should the Chief Instructor in such case find that the student is not fully qualified he shall be given the remaining hours of instruction to which he is entitled.

4. A standard final test shall be prescribed by the company. Such standard test shall be given to all students alike.

5. In taking a final driving test if a student's instructor advises that the test be given on a different coach the Chief Instructor shall make substitution of coach to the satisfaction of the instructor.

[fol. 506]

W

A new Section 6 shall be incorporated in the Agreement, reading as follows:

After one year's service with the Company all employees shall be entitled to twelve (12) days sick leave with pay each calendar year. Such sick leave shall be cumulative from year to year.

X

[fol. 507] Section 5 of the present Agreement shall be eliminated and a new Section 6 shall be incorporated, reading as follows:

This agreement shall become effective on the 1st day of June, 1943, and shall remain in effect until the 31st day of May, 1944, and thereafter until changed on thirty (30) day's notice, which may be served in writing by either party on the other on or after the 1st of May, 1944; in case one party serves notice on the other, the parties shall negotiate for thirty (30) days. In case the parties cannot reach an agreement at the end of thirty (30) days (unless this period is extended by mutual consent), all questions in dispute shall be submitted to a Board of Arbitration, whose decisions shall be final and binding on both parties.

In the event that the national wage policy is changed by the Congress, the President, the War Labor Board, the Director of Economic Stabilization, or other appropriate governmental agencies, either party hereto may upon thirty (30) day's written notice request changes in the wage rates provided herein to take effect thirty (30) days after such notice is served.

[fol. 508] CASE 4680—KAHN EXHIBIT No. 21

Filed 9-15-43

BEFORE THE RAILROAD COMMISSION

Case No. 4680

MARKET STREET RAILWAY COMPANY'S EXHIBIT No. 21

Expansion of Service Rendered by the Municipal Railway
of San Francisco

Car and Coach Hours

Fiscal Year.	Hours
1942-41	1,083,008
1941-40	1,064,439
1940-39	1,049,720
1939-38	1,003,126
1938-37	919,678

The above data was taken from the Annual Report of the Public Utilities Commission.

Car hours operated increased 163,330 or 18% during the fiscal year of 1941-42 as compared with 1937-38.

Herewith is shown the major extensions and changes of service from July 28, 1935 to date. Where such extensions or changes affected the Market Street Railway Company, comment is made indicating the line or lines affected. [fol. 509] July 28, 1935, Bus Route No. 6 commenced operation. Eureka Valley Station (Twin Peaks Tunnel to Diamond and Clipper Streets.

Market Street Railway Company lines affected: Route No. 8, Route No. 11 and Route No. 33.

September 15, 1937 Line "L" extension to Fleishhacker Pool commenced operation.

Market Street Railway Company line affected: Route No. 12.

January 1, 1938 Bus Route No. 5 Marina Route changed from Divisadero to Broderick Street.

Market Street Railway Company line affected: Route No. 22.

May 8, 1938 Bus Route No. 6 South Terminal changed to Diamond and Duncan Streets.

Market Street Railway Company lines affected: Route No. 8, Route No. 11 and Route No. 33.

January 15, 1939 Bay Bridge trains started operation to Bridge Terminal. Alternate Municipal Railway cars operated over Bay Bridge Terminal Loop.

June 25, 1939 Bus Route No. 6 rerouted over Castro, 19th, Eureka, 23rd, Diamond, Clipper, Church, 25th, Collingwood, and Market Streets.

Market Street Railway Company lines affected: Routes No. 8, 11 and Castro Cable.

July 9, 1939 Bus Route No. 8 commenced operation from Judah Street and 17th Avenue to Taraval Street and 15th Avenue.

Market Street Railway Company line affected: Route No. 17.

July 23, 1939 Bus Route No. 7 commenced operation from Forest Hill Station to Rio Court.

Market Street Railway Company line affected: Route No. 10

[fol. 510] July 30, 1939 Bus Route No. 11 commenced operation from Union and Powell Streets to Coit Tower, Telegraph Hill.

August 6, 1939 Bus Route No. 9 commenced operation from Potrero Avenue and Army Street to Bacon and Somerset Streets.

Market Street Railway Company lines affected: Routes No. 25 and Silver Avenue Coach.

August 6, 1939 Bus Route No. 10 commenced operation from Balboa Terrace to San Jose and Plymouth Avenues.

Market Street Railway Company lines affected: Routes No. 12 and 26.

August 6, 1933 Car Line "M" discontinued and replaced by Bus Route No. 10.

Market Street Railway Company lines affected: Routes No. 12 and 26.

August 24, 1939 Bus Route No. 10 Northern Terminal extended from Balboa Terrace to St. Francis Circle.

Market Street Railway Company lines affected: Routes No. 12 and 26.

October 14, 1939 Bus Route No. 6 Southern Terminal extended to South Van Ness Avenue and 23rd Street.

Market Street Railway Company lines affected: Routes No. 8, 11, 33, 24, 10, 9, 12 and 14.

October 15, 1939 Bus Route No. 10 Southern Terminal extended to Sickles Avenue and Mission Street.

Market Street Railway Company lines affected: Routes No. 12, 26 and 14.

October 30, 1939 Bus Route No. 9 Southern Terminal extended to San Bruno Avenue and Ware Street.

Market Street Railway Company lines affected: Route No. 25 and Silver Avenue Motor Coach.

December 27, 1939 Five new modern streamlined passenger cars were placed in service.

Market Street Railway Company lines affected: All routes influenced by additional cars in service.

July 2, 1940 Bus Route No. 12 commenced operation from Beale and Howard Streets to Army Street and South Van Ness Avenue.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

[fol. 511] July 7, 1940 Bus Route No. 12 Eastern Terminal extended from Beale and Howard to Market Street and the Embarcadero.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

November 18, 1940 Bus Route No. 1 extended to San Francisco Junior College on school days.

Market Street Railway Company lines affected: Routes No. 10 and 12.

January 1, 1941 Lines "B", "D", "K" and "N" Eastern Terminal changed to Bridge Terminal and Lines "C", "J" and "L" Eastern Terminal changed to Ferry Terminal from alternate cars of each line to Bridge and Ferry Terminal.

March 23, 1941 Bus Route No. 2 commenced operation from Twenty-Second Avenue and Irving Street to Thirty-Fifth Avenue and Noriega Street.

Market Street Railway Company line affected: Route No. 17.

March 23, 1941 Bus Route No. 3 commenced operation from Thirtieth and Church Street to Sickles and Huron Avenues.

Market Street Railway Company line affected: Route No. 14.

March 23, 1941 Bus Route No. 8 discontinued.

Market Street Railway Company line affected: Route No. 17 improved.

March 23, 1941 Bus Route No. 10 Northern Terminal extended from St. Francis Circle to 19th Avenue and Irving Street.

Market Street Railway Company lines affected: Routes No. 12, 26, 17 and 7.

April 6, 1941 Bus Route No. 14 commenced operation from Noe Street and Duboce Avenue to Haight and Belvedere Streets.

Market Street Railway Company lines affected: Routes No. 6, 7 and 17.

May 5, 1941 Bus Route No. 3 changed from Church Street, Day Street and Dolores Street to 30th Street, Sanchez Street and Randall Street.

Market Street Railway Company lines affected: Route No. 14.

May 19, 1941 Bus Route No. 14 Eastern Terminal changed from Noe Street and Duboce Avenue to Church and Market Streets.

Market Street Railway Company lines affected: Routes 3, 7, 17 and 22.

[fol. 512] June 8, 1941 Bus Route No. 7 Southern Terminal changed from Rio Court to Teresita Boulevard and Melrose Avenue.

Market Street Railway Company line affected: Route No. 10.

September 7, 1941 Line "R" commenced operation with trolley coaches from Army Street and South Van Ness Avenue to Beale and Howard Streets.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

September 7, 1941 Bus Route No. 12 discontinued between Army and Beale Streets.

Market Street Railway Company lines affected: See Item No. 30—Substitution.

September 8, 1941 Bus Route No. 12 operated as a shuttle service from Line "R" between Beale and Howard Streets and Market Street and the Embarcadero.

Market Street Railway Company lines affected: Routes No. 9, 12, 14, 11 and 36.

September 29, 1941 Bus Route No. 14 changed between 17th and Ashbury Streets and Cole and Carl Streets.

Market Street Railway Company lines affected: Routes No. 6, 7, 17 and 22.

December 8, 1941 Bus Route No. 10 extended to 25th Avenue and California Street.

Market Street Railway Company lines affected: Routes No. 12, 26, 7, 17, 5, 1 and 2.

January 4, 1942 Bus Route No. 10 consolidated with Bus Route No. 3 and Bus Route No. 10 discontinued.

Market Street Railway Company lines affected: Routes No. 14, 12, 26, 7 and 17.

January 4, 1942. Bus Route No. 12 (Shuttle) discontinued.

April 12, 1942 Bus Route No. 3 extended to Sea Cliff Avenue.

Market Street Railway Company lines affected: Routes No. 14, 12, 26, 17, 5, 1 and 2.

[fol. 513] CASE 4680 TO KAHN EXHIBIT No. 22

Filed 9-15-43

MARKET STREET RAILWAY COMPANY, SAN FRANCISCO,
CALIFORNIA

[fol. 514] A study to determine the net income of the Company for the first six months of calendar years 1937, 1938 and 1939 if a 5¢ fare with free transfers had been in effect.

[fol. 515] During the years 1937 and 1938 the Company made applications to the Railroad Commission for permission to increase its fares from 5 cents to 7 cents with four tokens for 25 cents and subsequently for a straight 7 cent fare. In seeking these increases the Company was fully aware and so testified that its patronage would decline but that its net earnings would increase sufficiently to permit the Company to meet its current obligations thereby preserving its solvency. Again in seeking these increases the Company was not asking for a reasonable rate of return as it realized that its "right to earn" was not compatible with its "ability to earn" under prevailing conditions.

If the Company had not sought and the Commission had not granted the increase in fares to 7 cents it could not have met its current obligations and bankruptcy would have ensued. To prove this statement the Company has prepared a table attached hereto which gives the estimated income for the first six months of the calendar years 1937, 1938 and 1939 on the basis of a 5 cent fare with free transfer and an actual income for those periods at the fare which it was permitted to charge. These six months periods were selected for the reason a 5 cent fare with free transfer was [fol. 516] in effect for the first six months of 1937; a 5 cent fare with a 2 cent transfer charge was in effect for the first five months of 1938; and a 7 cent fare with free transfer was in effect for the first six months of 1939.

The Exhibit indicates for the first six months of 1938 that the Company's net income before depreciation would have been \$12,704.04 as against an actual income before depreciation of \$48,442.36. In other words, for this six months

period of 1938 it would appear that the Company would have been better off had it continued to charge 5 cents with a free transfer instead of 5 cents with a 2 cent transfer charge; however, it must be borne in mind that the Company did not apply to this Commission for a 5 cent fare with a 2 cent charge for a transfer nor was there anything in the record from any source to justify such fare structure. Prior to making the application to the Commission for an increase in fares, the Company gave consideration to preservation of the 5 cent fare with a charge for transfers and discarded it when it realized that its position would not be improved under such a structure but quite to the contrary would become worse.

We next approach the period embracing the first six months of 1939 when the Company was authorized to charge a 7 cent fare with free transfer and during this period we find that the estimated net income before depreciation had a 5 cent fare been in effect would have been \$109,728.04 as against an actual income before depreciation of \$115,140.94 [fol. 517] thereby bettering the Company's position for that period by the sum of \$224,868.98 which enabled the Company to preserve its solvency.

[fol. 518] Description of Method Used in Analyzing Condition that Would Have Prevailed Had the Fare Structure Remained at 5 Cents

This statement covers the first six months of years 1937, 1938 and 1939.

The starting point used is the actual Revenue Car Hours operated for the first six months of 1937 and is assumed to represent 100% or 1,072,447 Revenue Car Hours (all of which was operated at a 5¢ fare). This figure is then adjusted to the business trend in San Francisco as compiled by the Research Department of the San Francisco Chamber of Commerce on a percentage basis minus or plus as compared with the previous year six month period.

Column No. 2—represents the Estimated Passenger Revenue based on the actual Passenger Revenue per Revenue Car Hour of \$3.3070 which prevailed during the first six months of 1937 under a 5¢ fare. This figure of \$3.3070 is then applied to the Car Hours in Col. No. 1 which gives us the estimated Passenger Revenue shown in Col. No. 2.

Column No. 3—represents Operating Expenses based on the Revenue Car Hours given in Col. No. 1 times the actual Operating Expense per Revenue Car Hour for the various periods shown.

Column No. 4—is Column No. 2 less Column No. 3, giving us the Estimated Passenger Revenue less Operating Expense.

[fol. 519] Column No. 5—represents actual other income taken from Operating Reports—Comparative Statement of Income.

Column No. 6—represents actual Tax Railway Operations taken from Operating Reports—Comparative Statement of Income.

Column No. 7—represents balance after Taxes.

Column No. 8—represents Total Income Deductions taken from Operating Reports—Comparative Statement of Income.

Column No. 9—represents Estimated Net Income before depreciation. Column No. 10—represents Actual Net Income before depreciation, taken from Operating Reports.

[fol. 520] San Francisco Chamber of Commerce

Business Activity

	1937 Index	1938 Index	1939 Index
January	108.0	96.3	97.5
February	101.9	85.8	89.0
March	112.9	98.6	101.7
April	108.8	92.7	96.2
May	102.4	87.8	92.7
June	101.4	91.0	96.9
Total	635.4	552.2	574.0
Change from previous year		13.2% Minus	4.0% Plus

(Here follows 1 paster, side folio 521)



314A

[fol. 521]

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	*C. of C. Trend using 1st 6 Mos. C. H. for '37 as 100%	Estimated Pass Revenue Based on '37 6 Mos. Revenue per C. H.	Total Operating Expense Based on Actual Cost per C. H. for various years	Estimated Pass Revenue Less Operat- ing Expense	Other Income Actual	Tax Railway Operation Actual	Estimated Balance After Taxes	Total Income Deductions Actual	Estimated Net Income Before Depreciation	Actual Net Income Before Depreciation
1st 6 Mos. 1937	1,072,447 100% Actual	\$ 3,3070	\$	\$	\$	\$	\$	\$	\$	\$
1st 6 Mos. 1938	930,884 13.2% minus =141,563	3,078,433.39	2,634,536.88 Col. 1 x \$2.8301452	443,896.51	5,389.75	228,000.00	221,286.26	233,990.30	12,704.04*	48,442.36*
1st 6 Mos. 1939	968,119 4.0% Plus =37,235	3,201,569.53	2,874,446.58 Col. 1 x \$2.9691046	327,122.95	3,816.69	212,000.00	118,939.64	228,667.63	109,728.04*	115,140.94

* San Francisco Chamber of Commerce Index of Business Activity.

* Red Figures.

(6) Service on the No. 22 Fillmore Street line was augmented to provide adequate transportation to employees of the Bethlehem Steel Company (Union Iron Works) terminal of the line being at 18th and Third Street.

[fol. 599] (7) Special contract service via motor coach was established from the plant of the Western Pipe and Steel Company at South San Francisco to San Francisco, two routes being operated both via Daly City, one terminating at Van Ness Avenue and Bay Street, the other at California Street and Arguello Boulevard.

(8) Special motor coach service is operated for the Navy transporting men to or from ships. Also men doing emergency maintenance work on ships are transported as directed by the Navy. The company provides special motor coach service for the Army when called upon to transport draftees or men of the armed forces.

(9) Service on all street car and motor coach lines has been augmented as was necessary to furnish transportation for employees of all industrial plants in San Francisco engaged in war work.

LVN:MLB. 9-11-43.

[fol. 600] CASE 4680—Exhibit No. 32

Witness Newton—Date Sept. 15, 1943.

Office of Defense Transportation
Division of Local Transport
1355 Market Street
San Francisco 3, California

September 9, 1943.

Mr. L. V. Newton, Vice President
Market Street Railway Company
58 Sutter Street
San Francisco, California

DEAR MR. NEWTON:

In a conference with officers of the Twelfth Naval District with respect to transportation, your Company was commended for the fine cooperation accorded. May we add appreciation of this Federal Agency for your attitude and

efforts to furnish service to war plants. Such operation by your Company has been adequate and satisfactory.

As you are probably aware, through requests for operating data, we have been prosecuting a survey of local transportation, aided by Mr. Morris Buck of our Washington engineering staff. The report is now in Mr. Eastman's hands, and while we may not advise as to detail of recommendations, you should know that the all-over picture showed an excess of service over demand on certain locations for the designated hours. We believe that the recommended program will produce much better transportation and provide quite a measure of relief for your manpower situation.

Yours very truly, Robert O. Crowe, Regional Director, Division of Local Transport.

ROC:ARF

[fol. 601-603]

CASE 4680, EXHIBIT No. 33

Witness Hunter

Date Oct. 1, 1943

Market Street Railway Company

Actual Revenue Passengers and Car and Bus Hours for the First Six Months of 1937, 1938 and 1939

Item	First 6 Months 1937	First 6 Months 1938	First 6 Months 1939
Revenue Passengers (Actual).....	74,874,875	72,260,221	47,442,501
Index.....	100.0	96.5	63.4
Car and Bus Hours (Actual).....	1,072,447	1,032,067	886,309
Index.....	100.0	96.2	82.6
Est. Car and Bus Hours with 5¢ Fare (Ex. 22 of Case 4680)	1,072,447a	930,884	968,119
Index.....	100.0	86.8	90.3

a=Actual.

Comparison of Estimated Effect of Fare Increase to 7 Cents Straight with Actual Results

Actual passenger revenue June-September, 1938 (Ex. 36)b..... \$2,640,098

Estimated June-September revenues after increasing fares from 7¢ & 4/25¢ to 7¢ straight:—

Witness	Ex.	Basis of Estimate	Estimated Revenue Increase	Resulting Revenue Estimate
Kahn	36b	5% token rider decrease on competitive lines only	\$110,392	\$2,150,490
(Company)				
Hall	45b	8% token rider decrease on competitive lines; 5% decrease on noncompetitive lines	55,610	2,095,708
(C. R. C.)				
	46b		60,512	2,100,610
Beck Transcript		10% token rider decrease on all	9,931	2,050,029
(City)	Pg 418b	lines		

Four-months revenue estimates increased 50%e to six-months basis, and comparison with actual passenger revenue for first six months of 1939 under 7¢ straight fare:

	Revenue	Comparison with First 6 Mos. 1939 Actual	
		Difference	Per Cent
Actual, first 6 months 1939.....	\$3,148,000d		
Estimate based on Kahn's Ex. 36b.....	3,226,000	\$78,000	2.5
Estimate based on Hall's Ex. 45b.....	3,144,000	(4,000)	(0.1)
Estimate based on Hall's Ex. 46b.....	3,151,000	3,000	0.1
Estimate based on Beck's testimony.....	3,075,000	(73,000)	(2.3)

(*) = Red Figures.

b Refers to exhibits and transcript of Appl. No. 21115.

c The increase should probably be somewhat more than 50 % to allow for heavier traffic in other than summer months.

d The actual revenue for the first 6 months of 1939 reflects the additional traffic brought by the Golden Gate Exposition, which was not considered in the estimates.

[fol. 604] Before the Railroad Commission of the State of California, Franck R. Havenner, Carl C. Baker, Justus F. Craemer, Richard Sachse and Frank W. Clark, Commissioners, Presiding.

Case No. 4680

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company.

APPEARANCES:

Cyril Appel, Ivoris R. Danes and Samuel Kahn, for the Market Street Railroad Company.

Angelo J. Rossi, Mayor, John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul Beck, for the City of San Francisco.

R. B. Cassidy, of the Commission's Legal Department.

[fol. 605] San Francisco, Calif., May 10, 1943: 10:10 o'clock
A. M.

Commissioner Havenner: The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the reasonableness of the rates and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company.

Will the Reporter note the appearances?

Mr. Appel: Cyril Appel and Ivoris R. Danes, Attorneys for the Market Street Railway Company.

Mr. Cassidy: R. B. Cassidy of the Commission's Legal Department.

Mr. Appel: I should mention Mr. Kahn, President of the Market Street Railway.

Mr. Holm: I ask that the name of John J. O'Toole, City Attorney of San Francisco, Dion R. Holm and Paul Beck be entered as appearances for the City. I have been requested, if the Commission please, to add the name of Angelo J. Rossi, Mayor of San Francisco, as appearing. He would have been here in person, but he was called to attend the funeral of Lewis Byington, President of the Public Utilities Commission of San Francisco. He will be here later during the day as he is muchly interested.

Commissioner Havenner: Are there any other appearances? If not, Mr. Cassidy, you may proceed.

[fol. 606] Mr. Cassidy: Mr. Hunter, will you take the stand?

J. G. HUNTER, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

Mr. Cassidy: What is your occupation, Mr. Hunter?

A. I am a civil engineer, presently employed by the California Railroad Commission.

Q: How long have you been employed by the Commission?

A. My employment with the Commission began in 1920. I have been continuously with the Commission.

Mr. Appel: We will admit Mr. Hunter's qualifications.

Mr. Cassidy: Thank you.

Q. Will you explain very briefly your duties with the Commission?

A. My present position requires that I supervise the work of the Engineering Division of the Transportation Department in all investigations and studies assigned to the Transportation Department by the Commission. We have a number of divisions in the Transportation Department; various work is reassigned from the Commission to the different special departments that handle that particular type of work.

Q. Have you a preliminary statement to make in connection with this matter that is now before the Commission?

A. Yes.

At the outset I would like to state the purpose of this statement is to give the background of the information [fol. 607] the Commission had before it when it instituted the investigation now under consideration, which was instituted April 22nd of this year.

It is the Commission's policy to keep in touch with the operating results of all utilities over which it has jurisdiction. In the carrying out of this policy, among other things, it instructs its staff to make certain studies and investigations and, in turn, report to it the results of such investigations. The information that the Commission had before it when it instituted this investigation may be briefly summarized as follows—I will first refer to annual reports that are filed with the Commission:

First we have the regular annual report, forms of which are furnished all privately owned public utilities and these public utilities are required to supply the desired information. That, of course, is a continuing record over a long period of time. In addition to that the Commission receives annual reports from this carrier, which is the copies of annual reports to its stockholders. This annual report is required to be filed pursuant to the terms of General Order 65.

In addition to the annual reports the Market Street Railway files monthly reports with the Commission. These monthly reports show considerable detail with respect to the operating results of that carrier. Under one heading "Income Accounts" it shows the situation for the current [fol. 608] month, the calendar year, the year ending the current month and the same information is shown for the preceding year.

Another section of this monthly report is given to the balance sheet or financial statement; that is based upon the results of the current month, preceding month and the same information for the last year.

➤ The next section is an analysis of bond and note indebtedness. First it takes up the matter of the situation as at the end of the current month. Another chapter is devoted to preferred and common stock issues.

The last portion of this monthly report is given to a construction statement showing original cost of physical properties based upon the valuation as of April 1st, 1921. This valuation is brought up to date by adding additions and betterments and eliminating retirements.

I will now refer to reports that were before the Commission and prepared by the Commission's staff. First, was a report—and I might say I will only include those that are of recent date—a report dated August 31, 1942, which is entitled, "Report on present market value of the Market Street Railway Company, San Francisco." This report was prepared pursuant to a representation to the Commission by a number of the members of the Board of Supervisors of San Francisco to the effect that the Board desired the assistance of the Commission in attempting to arrive at a fair market price for the property, as the City was then considering the purchase of the Market Street system.

Another report—and this is the last report prepared by the Engineering Department—dated November 16, 1942, and that report is entitled, "Study to determine the operating results with the same fare on the line of the Market Street Railway and the Municipal Railway system of San Francisco." The primary purpose of this report was to give the Commission the benefit of certain studies dealing with the estimated operating results that would obtain in employing a uniform fare structure; each of them provided for a universal transfer. The estimates were based upon a 6-cent fare for both properties; this study followed immediately after the election on November 3rd, wherein the voters refused to purchase the property for \$7,950,000.

In addition to these reports to which I have just referred the Engineering Department carries a continuing running chart—continuing running charts on the operating results of all street car companies in this State. These running charts show operating revenues, operating income, taxes, depreciation, operating expenses, revenue passengers. Also shows the fare changes, if any, during the period. Now, those charts have been carried forward since 1920 to date. In addition to the carriers operating under the Commission's jurisdiction we have the same information for the municipal lines.

In addition to the reports furnished the Commission by [fol. 610] the Transportation Department the Department

of Finance and Accounts keeps the Commission advised by periodic reports showing the results of certain operations from information in their possession.

I have tried to briefly touch on the high lights or cross-section of this information that the Commission had before it before the investigation was instituted, April 22nd.

At this time the Engineering Department of the Commission's Transportation Department is prepared to present certain information now available with the understanding that further studies and reports will be prepared and presented later dealing in more detail with the elements that should be considered in connection with the investigation now before the Commission. These further studies will include operating revenues, and might I state here the information to which I have referred with respect to the operating results have, to a considerable extent, been taken from the Company's records; it is our plan in future studies to perhaps go into those accounts pretty much on our own basis and determine whether or not, in our opinion, there should be any changes in those items. Continuing now, we will investigate operating expenses, taxes, depreciation, studies on rate base figures, the estimated operating results that would obtain under different fare structures. In addition to the information that the Transportation Department is ready to present the Department of Finance and Accounts is now prepared to present a report showing the Company's assets, liabilities, profit and loss and income accounts for the past five years.

Q. Mr. Hunter, I show you a document consisting of 9 pages, the first of which is headed, "Market Street Railway Company, comparative income statement years 1932 to 1942, inclusive, and 1942 and 1943 by months." Was that prepared by you or under your direction?

A. It was.

Q. Will you briefly explain the document, Mr. Hunter?

A. This document to which counsel has referred consists of 9 pages. It first sets forth the results of operation of Market Street Railway for the period 1932 to 1942, inclusive, and in addition for the first three months of 1943. That same information is also shown for the Municipal Line; later this information is plotted in chart form.

I will just briefly discuss the information as shown on the first page. There we have first the passenger revenue—and let me say this information is taken largely from the Company's records—there you will observe that the passenger revenue from 1932 to 1942 began with \$7,739,000 in 1932; in 1942 it was \$7,535,000, approximately. The intervening years have varied somewhat; the lowest earnings may be observed in 1940 of \$6,115,000, plus.

Q. Six million—

A. Fifteen thousand plus.

The next information shown on the table is "Other [fol. 612] Revenue." That, of course, comes from advertising and different items to which, perhaps, Mr. Fankhauser will show detail for later.

The next column deals with operating revenue, which is the sum of the first two.

The next deals with operating expenses, excluding depreciation and taxes.

The next item is depreciation and taxes and the next is, I think, the most significant chart, which is column 8; there we have the operating income. That, I think, might be described as money available for return; there you will see what has been the experience of this Company from its own records from 1932 to 1942. One year, namely, 1938, the Company failed to earn its depreciation and taxes by slightly in excess of \$40,000. Last year the Company's earning was \$1,069,914.

The next column shows operating income.

Next is gross income, deductions from gross income and, finally, net income. The detail for that, I think, will be cleared through Mr. Fankhauser's offering.

On the second page we break the results of operation for 1942 down in months, and that is carried forward to and including March of this year. Likewise, you may observe from column 8 the results of the operation with respect to money available for return.

Next we have the results of the operation of the Municipal [fol. 613] System; and I might say that while the Commission has no jurisdiction over the Municipal System any study or investigation dealing with the operations of the Market must, of necessity, involve a study of the Municipal System and, to a smaller extent, the California Cable, because in considering any transportation system in this City

you must think of them as a whole. Obviously, any change in fare on one system will affect the operations on the others. For that reason, and for further information, we have set forth the operating results of the Municipal Railway for the same period of time as that shown for the Market.

You will observe that the Municipal System pays no taxes. The operating income for the Municipal System was insufficient to pay expenses in 1932 by \$240,000; 1933 by \$7,000; I am only reading the thousands here, there is some hundreds go with it. And in 1939 by \$110,000. However, in 1939 there was some adjustment for previous years. According to our records in 1942 the Municipal System had an operating income to which I have referred to as money available for return of \$577,000 plus. Of course, they have a substantial item there for depreciation.

We have likewise carried the operating results of the Municipal System by months for '42 and the first three months of this year. You will observe that this operation has resulted in quite a substantial income for the months of January and February and March and the same thing is [fol. 614] more or less true for the last three months of 1942.

The next two pages is a tabulation showing the results of combining the two operating results, not the two systems, but we have merely taken figures appearing in the preceding pages and consolidated them into a combined statement. That does not contemplate any change of operation or what would have been the results had the systems been operated together or under any agreed plan; it is merely putting the figures all in one table.

Next we have a chart, on page 7 there is a chart showing fare passengers carried by the Market Street Railway and the Municipal Railway from the beginning of 1933 to March, 1943, inclusive. This statement is based upon the monthly operating results. There is also shown on this chart the fare changes that were put into effect on the Market Street Railway. I call your attention to the fact that in July—July 6, 1937, the Market Street Railway was authorized to charge 2 cents for a transfer, the base fare of 5 cents remaining. That fare continued until May the 29th, 1938, when the fare was increased to 7 cents cash, 4 tokens for 25 cents. The next fare change was January 1st, 1939, when the fare was increased to 7 cents, which is the prevailing fare.

In the case of the Municipal Railway the fare has continued through that period at 5 cents; the upper line on this chart shows a combination of the figures which support the [fol. 615] two lower graphs. From that chart you can observe what has been the experience of both these carriers for this period of time.

The next chart, on page 8, deals with the passenger revenue—let me turn back to the first chart again, page 7, and call attention to the fact that for the period 1933 to 1936 the Market Street Railway carried 71 per cent of the traffic in San Francisco, Municipal 29 per cent. Thereafter, and with the change in fares, the situation was changed materially, Market Street decreasing in volume with the increased fares and the Municipal increasing in volume. We pick it up again at the beginning of 1939 and from that time until the end of 1941 the result was that the Market Street Railway carried 52 per cent of the total volume and the Municipal 48. These figures do not include the California Street Cable.

Now, we turn to the second chart, revenue passengers. There the—

Commissioner Sachse: You said "revenue passengers"?

A. Passenger revenue, thank you. I should like to have that changed, passenger revenue. There you will see the operating results beginning with 1933 to March, 1943, with respect to the monies earned by each carrier, Market and Municipal. During the time that the fare was the same on each line the revenue divided itself approximately on the same basis as the fare passengers, namely, 71 per [fol. 616] cent to the Market and 29 to the Municipal. However, with the fare changes, and for the period 1939 to 1941, inclusive, the Market Street earnings has amounted to about 60 per cent of the total and the Municipal 40 per cent. That for the reason that there is the difference in the fare structure, and with the lesser volume of passengers and higher fare they get a higher percentage of the total money than they do of the percentage of the passengers carried.

The last chart on this exhibit, page 9, sets forth in graph form the information contained in the preceding table. This information is plotted with respect to operating income, depreciation, taxes, if any, and operating

expenses. We first have the results from the operations of the Municipal Line for the period 1932 to 1942, by years and by months from January 1st, 1942 to March, 1943, inclusive. I think the table speaks for itself. I call your attention again to the fact that there is no tax item in this graph. Below—

Mr. Cassidy: For the Municipal, you mean?

A. Municipal. Below there is shown results of operation of the Market Street Railway for the same period. I think the thing is pretty well self-explanatory with what I have testified prior hereto.

Mr. Cassidy: I offer in evidence the document explained by the witness as Exhibit No. 1.

Commissioner Havenner: If there is no objection the [fol. 617] document consisting of 9 pages entitled, on the first page, "Market Street Railway Company, comparative income statement, years 1932 to 1942, inclusive, and 1942 and 1943 by months," will be received in evidence and marked Exhibit No. 1.

Mr. Cassidy: Have you any further comment, Mr. Hunter, on this exhibit?

A. Not at this time.

Mr. Cassidy: Cross-examine.

Mr. Appel: No cross-examination at this time.

Mr. Cassidy: That is all, Mr. Hunter.

Commissioner Havenner: Any questions of the witness from the Commission?

Mr. Cassidy: Mr. Donovan.

JOHN F. DONOVAN, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

Mr. Cassidy: Will you state your name and position with the Commission?

A. John F. Donovan. I am now employed in the Commission's Department of Finance and Accounts as Assistant Financial Expert.

Q. How long have you been employed by the Commission?

A. I have been employed by the Commission since November 1, 1937, or for about five and a half years.

Q. Before your employment with the Commission did you engage in any accounting work?

Mr. Appel: We will admit Mr. Donovan's qualifications.

Mr. Cassidy: Thank you.

[fol. 618] Q. Mr. Donovan, I show you a document consisting of 10 pages, the first page of which is entitled, "Market Street Railway Company, comparative balance sheet." Was that prepared by you?

A. It was.

Q. Will you briefly explain the tabulation?

A. This report was prepared from the Company's records which consists of the comparative balance sheet as shown on the first page. Pages 2 and 3 contain notes explaining some of the figures shown on page 1 in the comparative balance sheet.

On page 4 is an analysis of the Company's profit and loss account for the years 1938 to 1942, inclusive. This continues also over on to page 5.

On page 6 is shown a comparative income statement for the years 1938 to 1942. On the following page is a statement of the Company's operating revenues for the same period of time, 1938 to 1942.

The following three pages show, by accounts, the Company's operating expenses for the years 1938 to 1942.

Q. In preparing this report, Mr. Donovan, did you attempt to analyze the records of the Company?

A. No, this report is merely based on book balances.

Q. And have you any further comment in connection with these tables?

A. No, I do not think so.

Mr. Cassidy: I offer the tables explained by the witness in evidence as Exhibit No. 2.

Commissioner Havenner: The document consisting of ten [fol. 619] sheets entitled, on the first page, "Market Street Railway Company, comparative balance sheet" will be received in evidence and marked Exhibit No. 2.

Mr. Appel: I have no cross-examination at this time.

Commissioner Sachse: These figures on this exhibit are taken from the annual reports on file?

A. No, they were not. They were taken from the Company's books.

Q. In the Company's offices?

A. That is right.

Q. You do not mean to imply that the figures in the annual reports differ from those in this exhibit, do you?

A. No, I believe they are the same. In a few cases it may be that additional information is shown in this report than would appear in the annual report. That would be very true, for instance, of the detail shown in the analysis of profit and loss account, so there probably is that additional information shown in the report than will appear in the annual reports. On the reports they show the total.

Q. The totals are the same?

A. The totals, I believe, are the same, yes.

Commissioner Havenner: Any further questions?

J. G. HUNTER recalled.

Direct examination resumed.

Mr. Cassidy: Mr. Hunter, did you have some further comment in connection with Exhibit No. 1?

A. Yes. I would like to refer to page 7 of Exhibit No. 1 and page 8. I notice we have got the war started at the [fol. 620] wrong time. That was called to my attention just now; instead of November 7th, we would like to make that December 7th. Some one wants to know if we had advance information, but I think the record should stand on December 7th. That is the only change I had.

Commissioner Sachse: Mr. Hunter, while you are back on again now I would like to ask you one or two questions.

Taking sheet 1 of this exhibit and also at the same time, if you can, look at page 8. Is my conclusion correct that, after the fare increase in 1937 to the Market Street Railway the net revenue or operating income, notwithstanding the fare increase, disappears completely for the year 1938?

A. That is correct.

Q. In other words, before the fare increase in 1937 the operating income of the Company was \$305,577; in 1938, after the fare increase, there was no operating income, but a deficit of \$40,234?

A. That is correct.

Q. Then in the succeeding years, 1939, 1940 and 1941 the Company never recovered from these fare increases to even the lowest income, the lowest operating income, which was in 1937, in no year after the fare increase did the operating income reach again the operating income prior to the fare increase, with the exception of the year 1942?

A. That is correct.

Q. In other words, am I correct in concluding that the loss in passengers, in fare passengers was so great up to fol. 621] 1942 that the fare increase was not able to overcome the loss in those passengers?

A. That is the way the results turned out.

Q. And, of course, in 1942, that being a war year, that situation changed?

A. Correct.

Commissioner Havenner: Can you give any explanation of the drop in operating revenue in 1940 as compared to 1939 and also to 1941, the drop in operating income?

A. 1939, Mr. Havenner, was the first year for the straight 7-cent fare, and an analysis of the operating results would be required to give a complete answer to your question. These are merely taken from their books without attempting to analyze or justify or explain why those changes took place.

Commissioner Havenner: Any further questions?

Commissioner Baker: I would like to know what the distinction is between sheets 2 and 3 of this exhibit, Mr. Hunter. In the absence of the caption or legend there is nothing to indicate on the face of these two sheets a distinction, whereas, the figures are different.

A. Well, three happens to be the sum of one and two on the—

Commissioner Sachse: No.

Mr. Brown: Three is the Municipal Railway, isn't it? One and two is the Market Street, three and four are Municipal.

A. Maybe I did not get the question.

[fol. 622] Commissioner Baker: The question went to the matter of distinction between sheets or pages 2 and 3 of the exhibit. In the absence of some legend or heading there is nothing to indicate the occasion or basis for the distinction?

A. Well, now, first referring to page 2, that is 2 of two sheets. It goes with one.

Commissioner Sachse: The exhibits shows it, Exhibit No. 1, "1 of 2."

Commissioner Baker: Oh, I see.

The Witness: Yes, they go together in pairs.

Commissioner Baker: I see.

The Witness: I had in mind columns.

Mr. Cassidy: If the Commission please at this time I suggest that the annual reports of the Market Street Railway Company for the last 5 years, 1938 to 1942, inclusive, be deemed part of this record by reference. May that be so stipulated?

Mr. Appel: That will be stipulated, Mr. Cassidy.

Mr. Cassidy: I would also suggest that the annual report of the Market Street Railway Company to its stockholders for the same period of time, which reports are filed with the Commission, under General Order 65, be deemed part of the record by reference.

Mr. Appel: That will be so stipulated.

Mr. Cassidy: And I would also suggest that the monthly reports of the Market Street Railway Company from 1938 [fol. 623] to date, be deemed part of the record by reference.

Mr. Appel: Satisfactory.

Mr. Cassidy: Thank you. Mr. Hall.

WARD HALL, a witness called on behalf of the Commission being first duly sworn, testified as follows:

Direct examination:

The Witness: Ward Hall.

Mr. Cassidy: Will you state your occupation, Mr. Hall?

A. Transportation Engineer of the Transportation Department of the Railroad Commission.

Q. And will you briefly state your experience in the transportation field, and particularly in connection with facilities and service?

Mr. Appel: We will admit Mr. Hall's qualifications also.

Mr. Cassidy: Thank you. Mr. Hall, in connection with the present proceeding, have certain investigations been made by you or under your direction?

A. Yes.

Q. Has a preliminary investigation been made of the tracks of the Market Street Railway-Company?

A. Yes.

Q. Will you explain the investigation?

A. Well, time did not permit of a detailed examination of the tracks of the Market Street Railway. However, a preliminary inspection was made under my direction by members of the staff who have had extensive experience in track work. These inspections were made on foot in order to ascertain the condition of the track and also all of [fol. 624] the lines were rid-en over in order to ascertain their riding qualities.

In addition to the inspection made by our staff I personally went over some of the sections which they concluded were in the worst condition. I wish to point out here, however, that the inspection did not include particularly paving as we were concerned with the safety of operation of the street-cars over the railroads and of their riding qualities. I might say that the inspection did show that there was a considerable amount of paving that should be taken care of; furthermore that there is much deferred maintenance on the system.

Q. Mr. Hall, did you find that any of the tracks were in such a condition that they would be unsafe to operate over?

A. Well, a preliminary, hasty inspection indicates that the tracks as a whole are in a reasonably safe operating condition as long as the operations are carried on without excessive speeds. Under the present routine of maintenance this operation should be reasonably safe for some time. However, it is imperative that the deferred maintenance should be caught up as soon as men and material are available.

Q. Did you find that any of the tracks were rough riding, so to speak?

A. Yes, in many ways we found that many points on the system were particularly rough riding. For example, on the Mission curve between 10th and 16th and out Fulton Street. I am just citing those as examples of other points [fol. 625] as well. However, we are now at about the end of the rainy season and tracks should be in their worst condition during the rainy season. Water gets under these track structures and foundations and joints start to pump and when these joints start to pump they pump out the fines of the ballast and cause low joints, and in many locations which the tracks were also out of level which would tend to cause a rolling of the cars as they go along the street. And those tracks being out of level is generally due to settling of the track or deferred maintenance where the tracks have not been brought up to street grade.

Almost all the track in the system is of 9 inch girder type tied together with tie rod. We found very often that a rail breaks at the joint and the Company cuts the rail off and puts in a piece of short section of rail, welding them together, instead of taking out the entire rail and putting in a new rail. If a complete new rail were put into place instead of a short section a considerable portion of the track would have to be torn up which, in all probability, would involve a certain amount of retieing and when a track is disturbed it has to be reconditioned; when only short sections of the rail are taken out the track structure is disturbed only to a limited extent.

Q: Mr. Hall, did you make any preliminary investigation of the track maintenance methods of the Company?

[fol. 626] A. Yes, I went into that in as much detail as possible. I went over their whole—their maintenance program with their maintenance engineer and some of the records and this maintenance routine is carried on at the present time with approximately 50 men in track gangs doing track work, welding, paving, etc. Schedules are set up so that the men know in advance where they are to work each day and materials, supplies and equipment assembled in order that these various jobs can be done in the least amount of time. Of course, if larger crews were available the abnormal maintenance after the rainy season could be completed in much shorter time. But at the present time men are not—men, apparently, are not available.

Commissioner Clark: May I interrupt? What do you mean "apparently not available"?

A. Due to the labor shortage.

Q. Is that a general observation of the entire field? Did you make any investigation to determine whether or not maintenance men of that classification were available?

A. Well, I would like to point out that a year ago where at one department hired about 80 extra men, today they have 20 less men than they had before they hired the 80.

Q. Is that an answer to my question?

A. I think so.

It was imperative that the present routine of maintenance must continue, particularly during these times when [fol. 627] materials are scarce or not even available, in order to preserve the present track structure for as long period as possible.

Mr. Cassidy: Mr. Hall, in addition to your preliminary track investigation did you also make any check of the equipment and rolling stock of the Company?

A. Yes, and, of course, that was, necessarily, preliminary as the time did not warrant an extensive investigation.

The Market Street Railway now has a total of about 40 electric street cars, 9 trolley coaches and 39 cable cars; of these the following are in service: 367 electric street cars, 9 trolley coaches, 27 cable cars; and the following are out of service: 73 electric street cars and 12 cable cars.

The electric street cars out of service have been examined as far as it was possible with the time available and it appears that they are in such a mechanical condition that they could be used after a reasonable amount of maintenance. Most of these cars are standing in the 13th Avenue lot, that is, an open lot, and I find that a very large amount of vandalism has been going on out there with the windows of some of the cars entirely broken out and the brass grab handles on others taken off, and just a general condition that you would find where there is vandalism of that sort.

Commissioner Sachse: Is there a watchman there?

[fol. 628] A. There is a watchman there, yes, but the vandalism seems to keep going on just the same.

The paint on—both inside and outside of the one-man cars I think would have to be repainted before they could

be placed into service. I might say that these one-man cars are relatively old and the bodies are in pretty bad shape, but they could be fixed up for operation.

Q. How old?

A. They are—some of them date back to 1918.

The paint on the 2-man cars that are stored is in much better condition, not so much glass is broken. Apparently the one-man cars are stored around the outside of the lot and the 2-man cars inside, which is the reason the one-man cars are in such bad shape.

These 2-man cars should have—should be repainted. The seats in the 2-man cars are fabrikoid and very good shape; however, the one-man cars are all cane seats and by a little maintenance and paint they would be serviceable.

The mechanical superintendent of the Company advises me that they had nearly enough glass on hand now to reglaze all these cars from cars that have been wrecked or burned in prior years.

It appears from this preliminary investigation that there is a considerable amount of deferred maintenance on the equipment now in active service.

Mr. Cassidy: Mr. Hall, I show you a tabulation entitled [fol. 629] titled, "Market Street Railway Company, revenue rolling stock as of May 1, 1943." Was that prepared by you?

A. It was.

Q. Will you explain and offer such comment as you may have on that tabulation?

A. Well, this tabulation was taken largely from the Company's records as I did not have time to examine each and every car. Now, this tabulation is set up so as to show what cars are now in active service, rather the first column is of total cars owned by the Company and the third column cars that are in active service and lastly those out of service. It also shows generally the type of cars and the year built and the number of the various types of cars.

I think otherwise the exhibit is more or less self-explanatory.

Mr. Cassidy: I offer the tabulation explained by the witness as Exhibit No. 3.

Commissioner Havenner: No objection the one page tabulation entitled, "Market Street Railway Company,

revenue rolling stock as of 5-1-43" will be received in evidence and marked Exhibit No. 3.

Commissioner Clark: I haven't any objection. I would like to make this general observation, that is, on an exhibit of this kind which would indicate by its heading and by the records themselves here in this case, this hearing, that this is the opinion and conclusion of the Railroad Commission based upon its investigation when information is [fol. 630] entirely taken from a Company that our exhibit should indicate that is based entirely on the records of the Company. This document as now introduced in evidence would indicate that that is compiled by the Railroad Commission, presumably to their entire satisfaction, that it is 100 per cent correct. However, I do not think that the Commission is in a position to state that it is a hundred per cent correct nor is there any reason to disbelieve that it is otherwise—disbelieve that it is correct, but my point is that I would just like to make a general comment that I haven't any objection here, but, not only in this, but in other cases, that when we compile a document presumably that there should be some method of distinguishing between those that are compiled to our entire satisfaction, if they are considering records only within our information as compared with when they have information all gathered by a Company.

Commissioner Havenner: Mr. Cassidy, do you wish to amend the title of this sheet?

Mr. Cassidy: If the Commission deems it necessary to amend it, of course, that can be done. I think, however, that the witness in each instance can explain the source of their information. Of course, their testimony in each case should disclose whence they obtained the facts or figures that they may show by the various studies.

Commissioner Clark: I earlier stated I did not intend [fol. 631] to make that as an objection, but simply as an observation, because I believe the witness has said this was taken largely from the records of the Company.

Commissioner Havenner: I suggest we take a brief recess at this time. (Recess.) The Commission will be in order.

Mr. Cassidy: Mr. Hall, before the recess you were discussing the equipment of the Market Street Railway Com-

pany and I will ask if you have as yet made any estimate of the costs of rehabilitating the cars out of service?

A. I made no estimates of cost.

Q. Will you explain the motive power of the various street cars?

A. The cars in storage have a lower power characteristic than most of the cars in service. The cars in service have 40 and 50 horsepower motors, whereas, those out of service have 35 horsepower motors.

Q. Does the Company have a car repair shop?

A. Yes.

Q. Will you explain the nature of the work in that car repair shop?

A. The car repair shop is maintained at Geneva Avenue where all major electrical, mechanical and body repairs are made. A preliminary investigation of the work going on in the shop indicates that a reasonable level of maintenance is carried on. On an average about 28 cars are going through the shop at all times for routine maintenance and special repairs. Minor repairs are usually made at the car barn where the car is assigned.

[fol. 632] Q. In your investigation, Mr. Hall, did you find car failures which required so-called pull-ins to the barn for repairs?

A. Well, I examined a pull-in record for the month of March and April, 1943, of street cars which have been pulled out of service due to the failure of one kind or another. It was noted that for March particularly a considerable number of pull-ins were caused by armature trouble. This trouble should decrease, I believe, in the dry months. In winter, during the rainy weather, water gets in the armatures and causes power failure.

Q. Mr. Hall, I show you a sheet entitled, "Market Street Railway; summary of causes of 'turn-in' of street cars March and April, 1943." Was that tabulation prepared by you?

A. It was.

Q. Have you any comment to make in connection with it?

A. In the preparation of this table I was furnished with all of the pull-in or bad order slips from various car barns and I took these bad order slips and divided them into three classes of failures, that is, electrical and motor repairs, mechanical repairs and accidents.

It will be noted that for the month of March there were 204 electrical failures, in April 167; mechanical repairs 80 in March and 49 in April; accidents 20 in March and 17 in April, with a total for March of 304 and 233 for April.

Mr. Cassidy: I offer in evidence the tabulation ex-[fol. 633] plained by the witness as the next exhibit in order.

Commissioner Havenner: If there is no objection the one page tabulation entitled, "Market Street Railway, summary of causes of 'turn-in' of street cars March and April, 1943" will be received in evidence and marked Exhibit No. 4.

Mr. Cassidy: Mr. Hall, I show you another tabulation entitled, "Market Street Railway operative motor coach equipment in service May 1, 1943." Was that prepared by you?

A. It was.

Q. What does that purport to show?

A. That purports to show the record of the motor coach equipment now in use by the Market Street Railway Company. All of this equipment is in general transportation use except the first item, that is a 17-seat capacity bus which has been fitted up for civilian defense use and used only for that purpose; in the case of a blackout or anything of that sort that bus immediately reports to the civilian defense.

Mr. Cassidy: I offer in evidence the tabulation explained by the witness.

Commissioner Havenner: No objection the one-page tabulation entitled, "Market Street Railway, operative motor coach equipment in service May 1, 1943" will be received in evidence and marked Exhibit No. 5.

Mr. Cassidy: Mr. Hall, have you made or caused to be made any investigation of the traffic flow on the lines of the Company?

A. I have, yes. In order to ascertain the general sufficiency of the service of Market Street Railway Company a spot check was made at certain selected points of load and headway characteristics during the peak period. 8 selected points were taken on April 29th and 30th compared with an earlier check of the—of December 9th and 10th, 1942, at the same locations. These checks indicate

somewhat smaller excess loads on the street cars and buses for April than for last December.

Q. I show you another tabulation entitled, "Market Street Railway Company traffic check summary of travel characteristics at selected locations." Was that prepared by you?

A. It was prepared under my direction.

Q. Will you explain that tabulation, please?

A. Well, this tabulation summarizes checks that we made at these various locations for the total peak period. It shows the number of units passing these points, seats available, number of passengers and the load factor for the April period and for the December period. The first half of the tabulation shows inbound morning trips and it will be noted that for the April period the average load factor of 1.6 resulted where on the December check the load factor was 1.7.

In the afternoon on the outbound we found an average load factor of 1.7 in April as against a load factor of 1—strike that—load factor of 2.0 for December.

Q. Mr. Hall, will you explain what is meant by a "load [fol. 635] factor of 2.0"?

A. The load factor is the number of passengers on the car divided by the number of seats. If you have 50 seats in the car and you have a hundred passengers on the car that would be a load factor of two.

Q. And a load factor of one?

A. A load factor of one you would have just a seated load.

Q. Have you any further explanation, Mr. Hall?

A. I might say that on individual trips during this period you will find the load factors much more, in some cases going as high as 2.3 or 2.4.

Commissioner Sachse: Mr. Hall, I notice that on December 9th and 10th figures on this exhibit there is no information for that point 16th Street and Potrero for rail. That information was not available in December?

A. That was not available for December.

Q. So to that extent the total figures are not comparable, are they?

A. To that extent that is very true.

Q. That is quite an important point, isn't it, that particular checking point?

A. That point was taken at this time due to the fact that it was carrying considerable load from the Bethlehem Shipbuilding Company.

Commissioner Sachse: I see.

Mr. Cassidy: I ask that the tabulation be admitted as the next exhibit in order.

Commissioner Havenner: No objection the one page tabulation entitled, "Market Street Railway Company, [l. 636] traffic check summary of travel characteristics selected locations including Municipal Railway Lines at Market Street and Van Ness," will be received in evidence and marked Exhibit No. 6.

Mr. Cassidy: Mr. Hall, in your check did you find that passengers were left behind at various locations?

A. At most of the locations, or rather at all the locations, with one exception, practically no passengers were left behind due to lack of room. At Third and Market Street, however, some passengers were left at the loading platform outbound in the evening, but rarely over a fourth a carload.

Q. And your check, Mr. Hall, was confined to two days in April and two days in December?

A. Yes.

Commissioner Clark: May I ask what is considered lack of room in your investigation?

A. Where people refused to get—any one refused to get on the car.

Q. What constitutes their refusal? Do you consider adequate room on a car providing a man will attempt to get on or is able to get on? I mean when you said your investigation showed that comparatively few people were left because there was not room on the car what constitutes room, now, room on a car?

A. Well, there is no more room—there is room for no more people on the car.

Q. Where? The top or fender or do you mean on the running board or do you mean strictly in compliance with [l. 637] the State laws?

A. In the riding compartment of the car.

Q. Riding compartment of the car? That would be between—that area between the motorman and the conductor and within the seating area?

A. Yes.

Q. You do not mean, of course, seats being available?

A. No, not—

Q. Including certain standing room? What would you say the average carrying capacity of a car is in order to have adequate room?

A. Well, that will vary depending upon how—depending on the seat construction of the car. Now, you take a car with cross-seats will stand much less people than a car entirely built with longitudinal seats, although the seating capacity may be almost identical. So there is no fixed rule as to—for all cars as to number of standing passengers it can hold.

Q. A lady, then, may be at a disadvantage, for example, finding room where a man might be able to get on simply because, physically she would not be able to, so that conditions may have been that crowded, still you would term it possible for passengers to get on, not necessarily be left behind?

A. I took the conditions as we found it without any opinion on our part as to whether it was adequate or not adequate. This check was taken to get the facts as we found it—as we found them.

Q. The point was this is your determination as to whether or not people were obliged to stay on the corner [fol. 637] because there was not available room anywhere, whether or not physically they could get on the car?

A. Yes.

Q. Anywhere on the car?

A. Anywhere in the riding compartment of the car.

Commissioner Sachse: When you say, "riding compartment", you include the platforms?

A. Oh, yes.

Mr. Cassidy: Mr. Hall, have you made any check concerning the fulfillment of schedules?

A. I went over the record of the Company and made an analysis of the scheduling of street cars of the Market Street Railway for the month of March. A check of the Company's record was made to ascertain the number of trips lost due to lack of manpower. Daily averages for the month of March shows that overtime paid to platform

men of 415 hours per day, the average number of cars out of service per day was 16, the average number of trips lost 69, men on vacation pay 59 per day, men on sick leave 101 per day. And I found there was seldom a man left on the extra board. The overtime pay shows that men are working long hours in an effort to keep—

Commissioner Havenner: In an effort.

The Witness: In an effort to keep as many schedules running as possible. The men of the Company are allowed two weeks vacation each year with pay and if they desire they may work through their vacation period and receive regular pay in addition to their vacation. This same indicates that an average of about 60 men worked through [fol. 639] their vacations where only an average of about 21 men actually took their vacations.

Mr. Cassidy: Mr. Hall, have you any opinion as to the cause of missed schedules?

A. It is quite clear in my mind that the loss of schedules is due primarily to the Company's inability to secure sufficient platform men or women to run all of their schedules and hold overtime to a minimum. Cars are available in all these schedules, but manpower is not available to operate them.

Q. Do you know if the Company contemplates the making of any rail extension?

A. The Company is now rehabilitating its tracks and overhead on Third Street from Townsend to Mariposa. When that work is completed street cars can be operated to the Bethlehem Shipbuilding Company's plant and with sufficient street cars the shift changes at that plant can be handled more expeditiously than at the present time. Motor coach equipment can then be released for the Hunter's Point line as well as other routes. The time of completion of this work depends upon the Company's ability to secure necessary materials.

Commissioner Sachse: Mr. Hall, to go back a moment to your testimony on the number of men that worked during vacations and overtime have you the total number of men involved so that it is possible to get an idea of the percentage of men who worked during vacation and the other extra work that you mentioned?

A. I think I have.

[fol. 640] Q. If you haven't got it available conveniently now why supply it some other time?

A. Yes. Well, I haven't got the total men actually on the payroll each day.

Q. In other words, the relationship between the total and these numbers that are working overtime and working extra time that you mentioned a little while ago?

A. Yes.

Commissioner Clark: I would like to ask is there a corresponding difficulty on the part of the Municipal Railway in getting sufficient personnel to man their equipment?

A. I presume there is. I haven't—

Q. Did you make any investigation to determine whether or not that the facilities of the Municipal Railway were similarly handicapped, they have to lie idle because of inadequate men?

A. I did not go on to the Municipal Railway.

Q. On what findings did you conclude that shortage of labor made it impossible for them to get sufficient men to man their equipment if you did not make an investigation of the field?

A. Well, I made my investigation of the record of the Company and the general disability of all lines of endeavor to secure sufficient help, whether it is shipyard or whether it is even ourselves.

Q. What others—directly what other line of endeavor in the same field, street railway systems, did you investigate to determine that fact?

A. Well, the Key System is in the same predicament [fol. 641] that they are unable to get sufficient—

Q. May I ask also do you believe the conditions of employment in the Municipal Railway are more favorable to attract employees? Do you think that they are able to, for example, at the expense of the Market Street Railway, able to get more applicants and hold them?

A. Well, I do not know, they might and they might not. I do not know what the conditions are on the Municipal Railway.

Q. As to the conditions of employment and the number of available employees, how do they compare?

A. Conditions of employment, number of employees available, rate of pay and all things that go up to create manpower.

Q. You believe, then, that even though this additional rolling equipment were in shape that then they would be unable to get manpower to operate it?

A. They would have to make a very strong endeavor to get it.

Q. Do you think they are now making a strong endeavor?

A. As I notice in the newspaper once in awhile they are making, through the want ad columns, I see large advertisements of the Market Street Railway along with all the other industries.

Q. That is the extent of your knowledge of their effort?

A. Yes.

Commissioner Clark: Thank you.

Mr. Cassidy: Mr. Hall, as a result of your preliminary [fol. 642] checks have you any general comment to make on the service of the Market Street Railway?

A. Unquestionably more service could be used on some of the lines in order to relieve crowded conditions for certain schedules, particularly during the peak period. One difficulty which appears to arise is the bunching of street cars and buses. Utmost care should be taken by the Company's supervisory forces to avoid this bunching of equipment as frequently when the equipment is bunched the leading cars are overloaded and the following cars are only partially loaded. If these cars were spaced as evenly as possible a better distribution of the loads would accrue.

Mr. Cassidy: Cross-examine.

Mr. Appel: I have no questions at this time. I would like to reserve the right to cross-examine later.

Mr. Cassidy: I guess that is all, then.

Commissioner Sachse: Mr. Hall, I have, I think, two questions, or maybe three.

Q. You mentioned in the beginning of your testimony that certain men from your Division or under your direction had assisted in the making of the inspection?

A. Yes.

Q. Who were they?

A. Mr. Seabridge and Mr. Conroy, both of whom are available if necessary.

Q. If you will please look at your Exhibit No. 4, Mr. Hall. I notice on that exhibit that the number of electrical and motor repairs and also number of mechanical repairs—[fol. 643] pairs—Not, however, to the same extent the number of accidents, is much smaller in April than in March. Have you any explanation for that? And I am particularly interested whether the explanation is or is not that either there was a better operating condition in April or that by lack of manpower or any other reason the Company was not able to do as much work in April as it did in March. What is the explanation for the big difference between April and March?

A. I am inclined to believe that March was a relatively wet month and April was a relatively dry month, and a larger proportion of the electrical failures were due to armatures getting wet. You see the housing on the motors are ventilated and during the wet weather the moisture will get in on the motors, and I might say that those electrical failures run the gamut of conditions from broken bell cords or buzzer connection or armatures or controller spring, blown out fuse. It covers anything that might happen electrically, don't matter how trivial it might be.

Commissioner Havenner: In the early part of your testimony, Mr. Hall, I believe you said that you had made no investigation of the condition of the paving between the tracks.

A. No particular investigation of the paving.

Q. Would an impaired condition of the paving around tracks have an effect on the condition of the track and the condition of the roadbed?

A. Paving of itself, no, because the paving does not support the roadbed. However, broken pavement allows water to get in under the roadbed and would contribute to the soft roadbed in the wintertime.

Q. Is it the intention of the staff to make an investigation and report on the condition of the pavement between tracks and around the tracks?

A. What was the question?

Q. Is it the intention of the staff—

Mr. Brown: Yes, I might answer that question, in conjunction with the City and the Company.

Commissioner Havenner: Any other questions?

Mr. Cassidy: That is all.

If the commission please that concludes the evidence that the staff is prepared to present this morning. However, as Mr. Hunter and Mr. Brown have indicated there will be future studies made which the staff will be prepared to present at a later date.

Commissioner Havenner: Has the Company anything to offer at this time?

Mr. Appel: We haven't anything at this time, Mr. Commissioner.

Commissioner Havenner: Mr. Holm, does the City intend to offer any evidence or testimony in this proceeding, or are you prepared to offer anything at this time?

Mr. Holm: No, if the Commission please, we have no thought of presenting anything to do. I do not know exactly what scope this investigation might take. We do not deem it necessary to make any studies at the present time, at [fol. 645] least.

Commissioner Havenner: Mr. Holm, would the City care to participate in any of the studies made by the Commission's engineers in this investigation?

Mr. Holm: Along what lines, Mr. Commissioner, please?

Commissioner Havenner: Well, of course, this investigation was undertaken with the hope that it might result in some improvement of the public transportation for the people of San Francisco and the investigation will be very broad in its scope and will go to almost every aspect of that question as it affects the operations of the Market Street Railway Company.

Mr. Holm: Well, of course, that is the devout wish of the City and County of San Francisco, through its administrative officers, the executive heads, but I do not know, speaking, of course, for myself, what studies of the City might, in any way, be helpful toward the Commission in reaching a conclusion.

Commissioner Havenner: I would like to ask the staff if they think that the City could participate in this investigation in any way to their advantage?

Mr. Brown: Yes, I think so, very much. I think there are a great many service matters that could be considered in conjunction with the Company and the City and the Com-

mission. It would not take, probably, very long to consider, I think it would be very helpful if we could have the co-[fol. 646] operation of the City.

Mr. Holm: If you would be good enough, Mr. Brown, to indicate what service studies you would desire the Municipal Railway representatives to undertake I feel certain that they would more than gladly cooperate and supply you that promptly.

Mr. Brown: That would be very helpful, Mr. Holm.

Commissioner Havenner: I think that perhaps that participation might not be confined entirely to the studies of the Municipal Railway, it might, I suppose, might include participation of the City Engineer's staff.

Mr. Holm: Well, there has been one study made, I have been advised informally, relative to the very question that you asked, Mr. President, of the witness concerning the pavement. I have been advised that there has been a rather comprehensive study made as to the conditions existing there and that, as far as I know, has been completed. I also believe that there has been an arrangement made between the Market Street Railway and the City concerning certain immediate improvements to the paving to be made. But I know I speak with authority when I say that you may count on the full cooperation of the Mayor and the Public Utilities Commission and the City Engineer's Department in supplying you with any information that would aid you in reaching a conclusion as to what could possibly better our transportation system in San Francisco.

[fol. 647] Commissioner Clark: I would like to make this observation: It is my opinion as a Commissioner that in discussing this matter the City of San Francisco administrative officers do it not only considering themselves operators of a competitive railroad, you might say, but also, in addition to that, entirely aside from that, as representing the public interest of the City of San Francisco to join with this body in trying to do everything possible to improve the service, whether that is operation of the two operations from the standpoint of a practical convenience to the public, or not, or whatever it might be, I think that this railroad Commission, at least, I am as an individual Commissioner, interested in seeing ways and means carried through at the earliest possible date that will result in improving the system for operating and for the convenience of the average

man and woman who is dependent upon this rail system at the present time to get to and from, particularly from war duties, and I think the City of San Francisco have an obligation to the public in addition to the position that it may occupy as operators of a competitive railroad.

Mr. Holm: Yes, we recognize that obligation and we are only too anxious to cooperate and aid in finding an answer to the situation that is before you. But I say that if you will just indicate to us in what way you wish us to proceed we will be glad to do it.

[fol. 648] Commissioner Clark: Any way that you feel that in your position as chief administrators of the City of San Francisco, and also the operators of a paralleling railroad, in many instances, a competing railroad in all instances, you might say, as will accomplish the desired result of improved service as rapidly as possible to all the traveling public who are dependent upon the rail system in San Francisco.

Mr. Holm: I know that our manager of Utilities has been in conference and attending meetings with the Federal authorities having charge of transportation, but I have not kept abreast of what those studies or suggestions have been made or what that committee particularly has considered or has in mind.

If necessary I would be very glad to confer with Mr. Cahill, who is manager of the Municipal Railway, or rather the manager of all utilities and could speak authoritatively for the Public Utilities Commission of San Francisco; if there is any particular thing that he could suggest that would be of help to the Commission we would be very glad to advise you, Mr. President, if any such facts are available or if he can make suggestions that would be of benefit to the City.

Commissioner Havenner: Thank you, Mr. Holm, we will accept your invitation to advise you of any way in which we think the City can be helpful in conducting this investigation.

Commissioner Sachse: I think the Commission would be [fol. 649] interested, at least I would, Mr. Kahn, in what program, if any, the Railroad has of an improvement of service, or putting this unused equipment into service, rehabilitation of those portions of the system that need rehabilitation, and particularly with reference to the deferred maintenance that seems to be in everybody's mind.

A statement or presentation from the Company of what the Company itself proposes to do, aside from anything that the Commission may want to recommend or order later on.

Mr. Kahn: You want a statement now or at the time we present our case?

Commissioner Sachse: I would like at this time, in view of the work ahead, I would like to know what the Company's program or what you propose to present to the Commission now or later.

Mr. Kahn: Well, if the Commission please, I can not state precisely what our presentation will be; it will depend somewhat upon the exhibits offered in this case by the Commission itself, the Commission's engineers.

Generally speaking our difficulty at this time is not one of equipment, it is one of manpower, and I believe that difficulty is not peculiar to the Market Street Railway, but to the Municipal Railroad, as well as to the Key System. In fact, based on hearsay, I think it is peculiar to most street railways throughout the country.

We recently addressed a communication to the Board of [fol. 650] Supervisors of San Francisco asking it, together with the Office of Defense Transportation, with concurrence of the Mayor, to suspend the one-man car ordinance which prohibits the use of and operation of street cars with one man. If that can be accomplished it would relieve to a great extent our labor shortage so far as platform men are concerned.

With respect to the maintenance of equipment and maintenance of track, we are doing everything within our power to perform that maintenance in the best possible way and to the greatest extent possible bearing in mind, of course, that it is—that we have a manpower shortage in those departments and also we have some difficulty in getting materials.

Does that about cover what you wanted, Mr. Commissioner Sachse?

Commissioner Sachse: It does not cover it, but that gives an indication anyhow. Are you making any or do you contemplate making any financial provisions for deferred maintenance?

Mr. Kahn: We have no definite program of setting aside anything for maintenance. We think our first obligation is to discharge our debts; it was money honestly borrowed

and we want to honestly repay it. Having gotten our debts out of the way we feel that we will then be in shape to refinance when the war is over or perhaps sooner so that we can improve our service generally, and when I say, "im-[fol. 651] prove" I mean improve in the broadest sense. That covers both modernization and improvement of present facilities.

Commissioner Sachse: Have you made any estimate of the amount of deferred maintenance or other rehabilitation work, perhaps in steps. What is the most urgent, what is the next most urgent and over what period of time and how much money will be taken for each one of those steps?

Mr. Kahn: Well, I think the most urgent work to be performed is now covered by a contract which we have recently entered into with the City.

Commissioner Havenner: Is that with respect to paving?

Mr. Kahn: Why there is—yes, some paving involved and some other maintenance work involved.

Commissioner Sachse: All this information will be available?

Mr. Kahn: Oh, yes, this is all of record.

Commissioner Havenner: What does that contract cover, Mr. Kahn?

Mr. Kahn: That covers some rail removal. You might say that a program really initiated by the Federal Government to get scrap for munition purposes. It covers the paving where the rail is removed and also covers some paving in addition to places where rail will be removed.

Commissioner Havenner: It does not cover any car repairing?

Mr. Kahn: No. Our cars are in generally good shape, [fol. 652] good operating shape. We have some cars that are stored in the yard at 13th and Lincoln Way, which are not usable at the present time, but with a modest amount of maintenance they could be put in good, safe operating condition.

Commissioner Clark: Do you intend to take steps necessary to put them into operating condition available for service, provided you can get the manpower to operate them?

Mr. Kahn: Yes. Whenever we get manpower to operate them and the load is such that we require those cars we shall put them in shape.

Commissioner Clark: Do you feel the load is such now as would warrant putting them into service, provided you could get people to operate them?

Mr. Kahn: We have cars that are in good operating condition now that we can not operate because of the manpower shortage.

Commissioner Havenner: What steps is the Company taking to try to get additional manpower?

Mr. Kahn: Well, the first step we took was the employment of women. We now have in our employ about 130 women, the majority of them being used on the back platform of the street cars known as conductorettes. We have a few women driving buses and also a few women acting as motor-women.

Furthermore, in our garage where we store our motor [fol. 653] coach equipment we have 12 or 15 women working.

Our next steps—well, I won't call it next step, exactly—I think concurrently with the employment of women we were advertising for men. In addition to advertising in the newspapers we are now having our employees seek out additional men and offering them rewards for getting such help for the Company. That has produced some additional employees.

Commissioner Clark: What is your hourly pay for motormen and conductors?

Mr. Kahn: Our top hourly pay for the motormen and conductors is 83 cents per hour.

Commissioner Clerk: What is your average?

Mr. Kahn: I can not give you that offhand.

Commissioner Clark: What is your lowest?

Mr. Kahn: 73 cents; that is paid beginners. For our bus drivers our pay is 90 cents an hour.

Commissioner Clark: Do you pay women the same scale as the men?

Mr. Kahn: Yes, the same scale.

Commissioner Clark: How does that correspond with the Municipal Railway on an hourly basis? Is it the same?

Mr. Kahn: We pay our motormen and conductors 83 cents an hour, which is $4\frac{1}{2}$ cents an hour less than the pay of the Municipal platform men. However, in paying our bus drivers 90 cents an hour we are paying them $2\frac{1}{2}$ cents [fol. 654] more than the Municipal Railway pays its bus drivers.

Commissioner Havenner: Any further questions?

Mr. Kahn: Is there anything additional, gentlemen?

Commissioner Havenner: I think not, Mr. Kahn, thank you.

Mr. Kahn: Thank you.

Commissioner Havenner: Now, with respect to the further hearing in this matter, what does the Company have to suggest with respect to a continuance at this time?

Mr. Kahn: If the Commission please I am obliged to go away the latter part of this week and will be gone for 3 weeks. After I return why it will certainly take me at least a week to clean up my desk, perhaps longer because we have union negotiations staring us in the face at this time. Our contract with the union expires June 1st. It has already made demands upon the Company of large proportions. How long that negotiation is going to take I can not say, but if the Commission feels it can give us a 90-day continuance it would be not alone desirable, but highly appreciated.

Commissioner Havenner: Well, during the recess I discussed this matter with the other members of the Commission and I can state it was the consensus of opinion that we ought not to delay this matter, Mr. Kahn, unreasonably. The investigation was started, as I stated, in the hope that it might be productive of some improvement in transportation for the people here during this emergency period in particular, and I think it is the sense of the Commission that we ought to proceed as expeditiously as we can with our investigation. If the Engineers and other employees of the Company would be willing to cooperate in some of the studies that we are making we would be delighted to have them do so; if they can not—and I do not know whether they can or not; I do not know how you feel about that, if there is any matter here in which you feel that your staff could cooperate with us in just getting the essential facts that are necessary to conduct this hearing, why, we will be glad to have them do so, but I think in any event our staff ought to proceed as rapidly as possible in order to make a thorough investigation here and perhaps make progress reports to the Commission. It may be impossible at this time to determine just how rapidly those progress reports can be made. But I hardly think that the Commission would feel disposed to grant a 90-day

continuance at this time, and perhaps the best thing to do would be to adjourn this hearing now to a date to be set and we would endeavor to give the Company due notice of that date when the Commission's staff is ready to present some additional evidence.

Mr. Kahn: Well, Mr. Commissioner, when I asked for the 90-day continuance I did not mean that—perhaps I was not explicit enough—I assumed that there would be some further hearings at which the Commission's engineers would present exhibits based on further work to be done by them. But after all those exhibits were in, which I assume would—well, I can not assume because I would not [fols. 656-658] know—we should want a reasonable length of time within which to study and examine them and prepare our answers to those exhibits.

Commissioner Havenner: Well, I am sure the Commission would be disposed to be reasonable in that matter.

Well, then, if there is nothing further to present at this time the Commission will adjourn for further hearing at a date to be set.

(Whereupon, at the hour of 12:20 o'clock P. M. the above matter was adjourned to a date to be set.)

[fol. 659] San Francisco, Calif., July 15, 1943, 10 o'clock A. M.

Commissioner Baker: The Commission will please be in order. This is the time and place for an adjourned hearing in Case No. 4680, the title of which has heretofore been read into the record and with which counsel and the parties are thoroughly familiar. Are there any further appearances to be made before we proceed?

(No response.)

Apparently none.

Mr. Cassidy: If the Commission please I understand from Mr. Holm he has two witnesses that he would like to put on out of order for their convenience.

Mr. Holm: Yes.

If the Commission please we were requested to submit information to the Commission showing the obligations of the Market Street Railway as to the use of streets, par-

ticularly relating to their paving obligations, and such study has been prepared and I have Mr. Vensano in Court ready to identify the result of his studies and to give whatever detail the Commission may desire.

In addition to that Mayor Rossi felt that he should show his interest in this proceeding and appear before your Commission and I expect him later on, probably by the time Mr. Vensano has finished his description of the study undertaken by him and his department.

[fol. 660] Mr. Vensano, will you please take the stand.

H. C. VENSANO, a witness called on behalf of the City and County of San Francisco, being first duly sworn, testified as follows:

Direct Examination:

Mr. Holm:

Mr. Vensano, what is your occupation?

A. I am the Director of Public Works of the City and County of San Francisco.

Q. How long have you occupied that position?

A. Since August 1st of last year.

Mr. Appel: Mr. Holm, Mr. Vensano's qualifications are admitted as far as Market Street Railway is concerned.

Mr. Holm: I just briefly would like to get into the record what is your profession, if you have one?

A. I am a civil engineer.

Q. How long have you pursued that calling?

A. Ever since 1913 when I graduated from the University of California.

Q. I see. Did you have prepared under your direction a report of the obligations as to the use of streets and conditions of streets in San Francisco used by Market Street Railway Company?

A. I did.

Q. And has the result of those studies been reduced to writing?

A. Yes, I have the result of the report here in front of me and desire to offer it as an exhibit.

Q. I see. How many copies of that have you at present, Mr. Vensano?

A. We only have four copies with us this morning; there has been some delay in delivery and they did not get here. [fol. 661] We have a number of others that we want to offer to the Commission for their use if they want them.

Q. Would you likewise supply sufficient copies to Mr. Cyril Appel and the other members of the legal staff of the Market Street Railway?

A. Be glad to.

Q. Will you please at least give one copy of this report to the Commission so they may follow you briefly in your studies.

Please relate how this report came into existence.

A. This report was made up actually as a part of a more complete report which was called for by an ordinance of the Board of Supervisors of the City and County of San Francisco covering all franchises in effect in the City and County. But this particular document is supposed to be complete of itself as far as the Market Street Railway goes; it will be part of a larger document covering the other franchises later.

I am going to read certain excerpts from my letter of transmittal to Mr. Brooks; it was made for submission to him under my direction by the City Engineer, and I will read my letter of transmittal.

[fol. 662] "T. A. Brooks,
"Chief Administrative Officer,

"DEAR SIR:

"Beg to hand you herewith 'Report of the Obligations as to the use of streets and condition of streets used by the Market Street Railway Company' prepared by the City Engineer. This may be considered as our second progress report in accordance with ordinance 1892, series of 1939, passed by the Board of Supervisors and approved December 15, 1942.

"This report contains a complete study and analysis of the obligations of the Market Street Railway Co. in so far as they relate to the physical conditions of the streets occupied by the Railway Company.

"I believe you will find it a very thorough document and one which should be of permanent value in connec-

tion with future considerations of their franchise obligations.

"A very thorough and minute study of all franchises, operating permits and bus line permits has been made and the results summarized herein and an estimate of cost giving the opinion of our Engineering Bureau as to the cost *for* the Market Street Railway Company of bringing our street paving up to the standard required by the franchise is included on page R-11. In arriving at this estimate inspection surveys and studies [fol. 663] have been made for each foot of track for which the Railway Company holds operating permits and the results of this survey have been diagrammatically plotted on sheets of the type shown in the report. These survey sheets were too numerous and voluminous to bind into the report but will be on file at all times in our Engineering Bureau."

Now, the summary in dollars and cents—

Q. Just a moment. You have reference here to the summary contained on page R-11 of the report, Mr. Vensano?

A. Yes.

Q. Will you please turn to that page and relate in as much detail as you care to the actual obligation, as this report shows, that the Market Street Railway must meet.

A. This report indicates that the total obligations for bringing the paving into proper condition would cost \$1,691,162.76. It is divided up into a number of sections called "keys"—key numbers 1 to 30, and opposite each of those is given the name of the line and a break-down of that total and following that summary the report is divided up into sections covering each one of these key numbers, discussion of the franchise obligations as respects paving and track work and a detailed summary of that particular key number.

Q. Now, just precisely what does this estimate include? Is it paving, back fill or just give the elements that make it up?

A. It includes—I will have to go into a little detail on [fol. 664] that. In a former report we made a similar investigation before my time, in which we went into the question of relaying track complete when the track was very bad, and in other cases of just paving, and that was crit-

icized for the reason that it was thought we had no right under the franchises or operating permits to call for complete reconstruction of track. That was just a matter for the Railroad to decide.

So, in this case, we did not endeavor to include any track reconstruction other than such as would be necessary to bring the rail to such a position as would permit of the smooth pavement being worked up against it. The cheapest way to do that would be to shim the rail, regardless of the condition of the ties and the ballast and the under parts of the track. It would be a thing that would not be practical, but it would be a minimum cost in our opinion. So, this estimate purports to show the cost of the paving plus the cost of raising the rail to a uniform, even grade line so that paving could be brought up to it in a way that would leave the street a good street for operating vehicles over.

Q. Now, by "paving," please define what you mean by that. What goes into paving?

A. Well, the paving, the extent of paving varies with these individual franchises.

Q. First of all, tell us what you mean by "paving," and does that include certain foundation work and rock?

[fol. 665] A. It would include the smoothing up of the sub-grade, the placing of the grade base and an asphalt top, if that happened to be the character of the surrounding street paving, or it would have to match up, in general, in most of the franchises calls for matching up with the surrounding paving on the rest of the street, and the paving included herewith would be of a similar type, from top to bottom, as the surrounding street paving.

Q. Now, then, how much of an area of the streets did your studies contemplate it was required that the Market Street Railway do?

A. That varies with each franchise. Some of them it is just from rail to rail, sometimes it is two feet outside the rails. In each case it is different and it is all indicated in here just what it is.

Q. Have you specified each franchise and the requirements under each franchise or operating permit?

A. Well, we have endeavored to divide them up into key numbers covering each operating line, and that operating line as these lines have been changed from time to time, the routes have been changed, the actual paving require-

ments could vary throughout the length of the route, but it has all been covered in detail. We have, as I said a moment ago, a block chart and diagram for each and every block of street that was covered on record in the City Engineer's office showing the footage of track that we thought ought to be shimmed and the footage of track that ought to be paved and the character of every foot of paving.

[fol. 666] Q. Was this report made after actual physical inspection of the streets?

A. Yes. The work was done under Mr. Levy, who is here now, who could give you a little more detail than I can on it. But, in general, parties were sent out to go over the thing on foot, and I am not—I do not believe that they were measured actually with a tape, but they were paced or otherwise closely approximated, foot by foot, for the entire length of each line.

Q. Would you please go back to page R-11 of this report before me and direct your attention to two items appearing toward the end of the page, one in the amount of \$80,445 and another in the amount of \$6,234, and explain what those two items are?

A. Those two lines are lines on which the permits have expired and they were being operated from day to day permits so that the cost of the work on those two particular lines were segregated and kept out as possibly uncertain as to whose obligation they were, perhaps ours, or the Market Street Railway.

Q. But that is not included in the total of \$1,691,162.76?

A. That is correct.

Mr. Holm: I think that is all that I care to ask him excepting that I would now offer this report, entitled, "Report of the Obligations as to the use of streets and condition of streets used by the Market Street Railway Company (in accordance with Ordinance 1892 (series of 1939) passed by [fol. 667] the Board of Supervisors and approved December 15, 1942) submitted to Mr. T. A. Brooks, Chief Administration Officer by H. C. Vensano, Director Department of Public Works June 30, 1943" as being in evidence.

Commissioner Baker: The report referred to by counsel, as identified by the witness will be received in evidence and marked Exhibit next in order, No. 7, I believe—No. 7.

Mr. Holm: Now, if either the engineers of the Market

Street Railway or the engineers of the Railroad Commission at any time desire any details concerning this report they are at liberty to consult with Mr. Vensano and his assistants at any and all times and they will supply whatever information they want, but at this time we offer Mr. Vensano for any questioning that anybody may care to subject him to.

Mr. Cassidy: No questions.

Commissioner Baker: No questions?

Commissioner Sachse: I would like to ask Mr. Vensano, was a copy of the report furnished the Market Street Railway?

A. It has not been yet, but I promised Mr. Newton a copy. Our copies were held up, they are on a truck somewhere running around San Francisco instead of being delivered to us.

Q. And I take it that this amount of what might be called deferred paving maintenance is accumulated over a period of years?

A. Yes, it has.

Q. Have you any idea of what period of years is represented by that accumulation?

A. No, of my own experience I could not say. I would [fol. 668] say from the very beginning, probably been work from time that they could have accumulated from a long time, from the beginning of the period of operation up to date, depending upon how much they have done in the meantime.

Q. But you would say that the accumulation has been most pronounced during the war period, during this period since the war, or was it just as serious before?

A. I would not say that. Of course, you understand that I am just in my position for the last 10 months and have not been thinking about this. Perhaps Mr. Levy could answer that.

Commissioner Sachse: I have no other questions.

Mr. Appel: I would like to reserve the right to cross-examine Mr. Vensano after I have examined the report, if I desire to do so, please.

Commissioner Baker: Very good.

Mr. Holm: Certainly.

Commissioner Baker: Any further questions of this witness at this time? Apparently not. You may be excused, Mr. Vensano, for the time being.

Mr. Holm: My other illustrious witness has not appeared as yet, if the Commission please, so I guess I will have to cease for the time being.

Commissioner Baker: I think we could meet it this way, Mr. Holm, when his Honor comes in we might proceed with the witness and when his Honor comes in we might take [fol. 669] the Mayor on out of order.

Mr. Holm: I would like you to do that very much. Thank you for making the suggestion.

Commissioner Baker: Very good.

Mr. Cassidy: If the Commission please, so far as the presentation of the staff is concerned I would like to make a very brief preliminary statement.

The Transportation Division is prepared to present three witnesses today, Mr. Mors, Mr. Hall and Mr. Hunter. Mr. Mors' testimony will deal primarily with revenues and expenses, although he will cover some other matters. Mr. Hall's testimony will be concerned with the results of certain traffic checks and it will also relate to certain phases of the manpower situation. The testimony and the exhibits of these two witnesses will be largely factual in nature, and their studies have been made under the general supervision of Mr. Hunter; in the course of Mr. Hunter's testimony he will present a report containing certain conclusions and recommendations as a result of these studies.

Mr. Mors, will you take the stand.

* CHARLES W. MORS, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

Mr. Cassidy: What is your occupation, Mr. Mors?

A. I am transportation research engineer for the California Railroad Commission.

Q. How long have you been employed by the Commission? [fol. 670] A. Since January, 1937.

Q. Will you state briefly your engineering education and experience?

Mr. Appel: Mr. Mors' qualifications will be admitted.

Mr. Cassidy: Thank you, Mr. Appel.

Q. In connection with the present proceeding, Mr. Mors, have you made certain studies which deal primarily with revenue and expenses of the Market Street Railway Company?

A. Yes, I have.

Q. These studies have been made under Mr. Hunter's general supervision?

A. Yes.

Q. And have you prepared a document entitled, "Report on the results of operation of Market Street Railway Company"?

A. Yes, I have.

Q. Mr. Mors, will you, very briefly, state the purpose and the scope of your report?

A. The purpose of the report is to present a brief historical summary of the financial results of operation of Market Street Railway Company over the 21 years ending December 31, 1942, with particular reference to the last few years and with some consideration of results for the first few months of 1943.

The report consists, primarily, of an analysis of the Company's operating expenses, depreciation practices, including a comparison of operating expense trends with trends of the corresponding expenses in the San Francisco Municipal Railway and in the Los Angeles Railway Corp. [fol. 671] ration. Revenues are analyzed to determine the effect of recent fare increases and other factors upon the revenue and traffic of Market Street Railway and upon the distribution of revenue and traffic between Market Street Railway and the Municipal Railway.

A section is devoted to discussion of the road and equipment account and another section to a brief analysis of taxes.

Pertinent information regarding the Company's historical background, organization and financial control and present operations are also included.

Q. Do the first four pages of your report contain certain general information and data relating to stock ownership and the organization of the Market Street Railway Company?

A. Yes, they do.

Q. And pages 5 to 10, inclusive, deal with the general history of the present operations of the Company?

A. Yes, they cover, very briefly the history of street railway operations in San Francisco and the extent of Market Street Railway's present operations, also the several fare changes authorized by the Commission in 1937 and 1938 are summarized there.

Q. I call your attention to two tables immediately following page 9 of your report. Will you explain those tables, please?

A. These tables, or rather table, because the second sheet is a continuation, show certain operating statistics for the [fol. 672] month of May, 1943, by types of operation and by lines. They show, for example, the round trip route miles, the number of units operated, and I might mention there that the last day of May was chosen for the number of units operated and that was rather unfortunate because it happened to be a holiday, and it shows a considerably lower number of street cars than Mr. Hall's exhibit introduced at the last hearing. Continuing, it shows passenger car miles, revenue passengers, transfer passengers, total passengers carried and revenue for the month.

Turning back to page 9 some of these statistics are summarized on a percentage basis for the different types of operation in the tabulation on that page.

Q. The next section of your report, Mr. Mors, deals with operating revenue, beginning on page 11. Will you state the general nature of the information shown in that section of your report?

A. This section shows the trend of operating revenue by accounts for the last 21 years. That is shown in Table 3-1, following page 11. It gives an explanation of the various components of revenue and it attempts to show, to some extent, the effects of the several fare changes upon revenue and traffic.

Q. If you will turn to the chart, please, following page 16. Will you explain what is shown on that chart?

A. This chart shows the division between Market Street [fol. 673] Railway and the Municipal Railway of the revenue passengers and passenger revenue of the two combined over the period 1937 to the present. It supplements the two charts introduced by Mr. Hunter at the first hearing as a part of Exhibit 1. Those charts showed the absolute magnitudes of revenue and the number of fare passengers whereas this chart puts the division on a percentage basis

and shows, what percentage each month each Company had. This chart brings out the effect of the several fare changes; the fare changes are indicated down near the bottom of the chart. It shows that prior to the first fare change the Market Street Railway had almost 70 per cent of both revenue passengers and passenger revenue; passengers dropped some when the 2-cent revenue transfer was introduced and the revenues dropped relatively little. When the fare was changed from 5 cents to 7 cents or 4 tokens for a quarter in May, 1938, revenue passengers dropped sharply and passenger revenue dropped, or there was a shift of passenger revenue also, but not as great. At the present time Market Street Railway carries little more than half of the total revenue passengers of the two companies, but because of the higher fare obtains somewhat more of the total passenger revenue, about 58 per cent.

Q. What has been the experience of the Company regarding the use of tokens?

A. Referring to page 13 of the tabulation at the bottom of that page it shows the relative use of tokens and cash [fol. 674] fares during the 7 months period when—in 1938—when the fare was 7 cents or 4 tokens for a quarter. It may be seen that when there was this incentive to buy tokens as a means of saving money about 70 per cent of the fares were token fares. At the present time the Company sells tokens, but at the same price as the cash fare and the tabulation on page 14 shows that only 15 to 20 per cent of the fares in recent months have been token fares.

Q. The next section of your report begins on page 20?

Commissioner Sachse: May I interrupt there a moment?

This chart on—your chart following page 16, Mr. Mors, is very interesting to me. I will state my interpretation and if you think it is not correct, why, I wish you would say so. When a fare increase is sought by a street railway company the objective is to produce more gross revenue with the same amount of service, would you say that that is correct?

A. In general it is. I can visualize the objective of increasing the net revenue, perhaps, without increasing the gross revenue. That is, a fare increase might result in decreased revenue and yet sufficient reduction in operating expenses to put the Company in a somewhat better position.

Q. That is right. But, if the fare increase, after it was made, had the result in not only decreasing the gross revenue, but also the net revenue, then the fare increase would [fol. 675] have done the company no good and they would have been better off if they had kept the original fare, is that right?

A. I think that is correct.

Q. In other words, a fare increase expects that there will be a certain decrease in traffic because—under normal conditions—because when you increase the fare you have to expect a certain loss of traffic, particularly—I won't go into any details—the short haul traffic. That is, as a rule, expected, but it is expected that the increase in fare will overcome this falling off in traffic. But, if the falling off in traffic is so great that the increase in the fare did not actually, over the period of time, overcome the falling off in traffic, then the fare increase has not accomplished what it is intended to accomplish?

A. That is true, and later in the report I have a chart which shows the effect of the fare changes month by month upon the total revenue and net revenue, month by month, and the effect of the fare. Those will be obvious. I will explain that chart later on.

Commissioner Sachse: All right.

Mr. Cassidy: Will you turn, Mr. Mors, to your next section beginning on page 20 and, speaking generally, what do you show in that section?

A. This section deals with operating expenses and shows the trends of the various operating expenses over the past 21 years, and the detail by accounts for the years 1941 and [fol. 676] 1942 and the 12 months ended May 31, 1943. It also shows cost per car mile, per car hour, etc. for the several expense groups and principal accounts, particularly maintenance accounts, and compares these unit costs with the corresponding cost in the San Francisco Municipal Railway and Los Angeles Railway Corporation.

Q. What is shown on the charts there following pages 20 and 21?

A. Charts 4-1 and 4-2 show the trends of total operating expenses and maintenance expenses respectively, and their components, from 1922 to 1942.

Shows a period of decline following 1927 or 1928 and then a leveling off from about 1933 for several years.

Another period of decreasing expense ending with a minimum in 1941, and both maintenance and total operating expenses have shown substantial increases in 1942.

The charts show that, whereas total operating expenses declined about 35 per cent from 1927 to 1941, maintenance expenses declined more than 50 per cent.

Q. Now, will you refer to a table marked "4-2" which is the second page after chart 4-2 and explain that table, please?

Commissioner Baker: Pardon me, Mr. Cassidy. I notice just now that the Mayor has arrived.

Mr. Cassidy: Yes, Mr. Commissioner.

Commissioner Baker: Probably be a courtesy to him if we would—Mr. Holm, I just commented a moment that his [fol. 677] honor had arrived and if you should prefer, why, we will put him on out of order.

You may be excused temporarily, Mr. Mors.

ANGELO J. ROSSI, a witness called on behalf of the City and County of San Francisco, being first duly sworn, testified as follows:

Direct examination.

Commissioner Baker: It is not necessary to call for the name.

Mr. Holm: Your name, please?

A. Angelo J. Rossi.

Q. And your occupation?

A. Mayor of San Francisco.

Q. How long have you been Mayor of San Francisco?

A. 12 years and 6 months.

Q. Mr. Rossi, I had explained to the Commission that you had been very much interested in this matter of transportation in the City and you desired to call the attention of the Commission to certain thoughts that you had on the subject. Would you begin, please, with a little brief recital of your activities concerning the advocacy of a bond issue for the acquisition of the Market Street Railway? When did you begin that and just generally, please, explain what it was?

A. I think that bond issue was instituted by the Board of Supervisors.

Q. Yes. And the purpose of it was to issue revenue bonds for the purpose of taking over the physical properties?

A. No, the original proposition was on lease-purchase plan which was recommended by the Public Utilities Commission [fol. 678] and the Board of Supervisors were having hearings on the matter and extended it to the point where they finally decided they thought a bond issue, a revenue bond issue would be more advisable.

Q. And was it your policy that that bond issue should have been passed upon by the people?

A. I would not say it was my policy, no. I think they will still maintain that the original proposition was best for that particular time, while it is true a revenue bond issue was desirable, and likewise a general obligation bond issue is still better, but you must remember that you have got to get the consent of the people, in one instance two-thirds of them and in the other a majority. That is a difficult problem to sell it to the people. There is always some element, some motive, whatever it may be, would take the position and present their side of the case to the people, and, after all, I have always taken the position that as far as transportation is concerned that, while it is true that we would like to have the people pass upon these matters, still, at the same time public officials have a responsibility, and particularly so during an emergency, and we should have the courage to go through with it; just as an example, to show—and I do not need to take the position that, "I told you so", but when the first proposition was submitted to the Board of Supervisors, which was in May, last year, the proposed recommendation of the Public Utilities Commission [fol. 679] which had my approval, was to the effect that we would acquire the property of the Market Street Railway Company on a certain basis—and, by the way, I just want to say at the outset that, in my opinion, the transportation problem in San Francisco will never be solved until we have a unified system, one fare and one ownership, there is no question about that in my mind whatsoever—at any rate, the agreement that we submitted or proposal that we submitted to the Board of Supervisors called for the purchase of the Market Street Railway

Company on a lease-purchase plan. The figures that were then given—true, they were estimates—it seems to me were in an amount that we should—rather we expected to make a profit of \$2,416,124 a year, I think. I haven't the schedule in which we were to meet our agreement with the Market Street Railway, as a part of our estimate of that—that \$2,000,000 a year. I just want to bring that out because if that had gone through we would have had a unified system not later than July 1st of that year, and our estimates were far below what the actual figures are of today. The figures, if we had entered into that agreement, instead of having a profit of \$2,416,000, plus, would have been \$4,879,406, and we could have paid for that property possibly within a period of not more than 3 years.

Commissioner Sachse: At what rate of fare was that estimate?

A. That would be at 7 cents because the Municipal Rail- [fol. 680] way can operate at 5 cents, but it is my thought and the thought of the Public Utilities Commission that we should have the fare at 7 cents so as to liquidate the properties as soon as possible and place us in a position wherein we could then ask the Federal Government for priorities on additional rolling stock, which I understand they were willing to do.

I still think that was a sound, best proposition, and it is not a question of just simply buying out a competing company, as it was the only method, in my opinion, to solve that problem.

The Board of Supervisors did not act and as a result of that they finally decided upon a bond issue which is better, in a way, but you have to get the approval of the people, which naturally means delay and means a campaign. The City itself is in no position to carry on that campaign because the charter will not permit us to spend one dollar to even give the facts to the people. That is one of the handicaps that we have in so far as municipal ownership is concerned.

Now, the best answer to the fact that it would have been good business for the City to have acquired the property on that basis is that the stock of the Market Street Railway Company in 1940, low, was 2.875; the bonds, 7 per cent bonds were selling at \$57. Today the bonds are selling at \$97 and the stock at \$16.50, so the profit is going to the stock-

[fol. 681] holders of the Market Street Railway Company—I don't blame them a bit—instead of the City getting the benefit of that increase.

Mr. Holm: Now, Mr. Mayor, in view of the will expressed by the people that they did not accept the policies of acquiring the operative properties of the street railway are there any general principles that occur to you that you think might act as a sort of a—well, as a piecemeal or time element in taking care of the traffic situation from any adjustment between the operations of the two railways that occur to you that would be helpful?

A. I am still of the opinion that the only way to do it would be to devise some plan, self-liquidating plan, where the City would eventually own the property of the Market Street Railway Company. I am still of that opinion.

Q. I realize, of course, that you are not in any sense operating the railway itself physically, not an engineer, but are there any outstanding changes that could be made, in your opinion, that might facilitate operations?

A. That would be a matter entirely up to the management of the railway, the Public Utilities Commission.

Q. I see.

A. As I understand it, Mr. Cabill, representing the City Government, likewise others representing the privately owned transportation companies have met with Mr. Crowe, but just what they did up to this moment I do not know other than press reports that I read.

[fol. 682] I think that there is an honest effort being made to improve the service. No matter what is done you will never be able to solve the problem until you have a unified system, and among other factors that must be overcome is that the Market Street Railway Company have a franchise to run 12 or 13 years, and no city can progress until they have unified system, in my own idea. Well, there might be a question as to the value of the property, the fact was always debatable, still no allowance was made at any time for the value of the franchise, if it has any, nevertheless, they can carry on for the next 12 years, and so far as I am concerned if there is any question as to the price I would be perfectly—in fact, I would welcome an estimate of the Railroad Commission. I think if the matter can be worked out, and it should be worked out, sitting down and, just

simply negotiate with the officials of the Market Street Railway Company, trying to work out some self-liquidating plan, then we can immediately go to work and unify your system, give the best service you can for the rolling stock that you have and the equipment. In my talk recently with Mr. Eastman, he said if any thing should be undertaken along that line that—Mr. Richardson also—said then they would give serious consideration to at least recommending that San Francisco get priority in additional rolling stock.

Q. So that the Commission may be advised, Mr. Mayor, it is a fact, is it not, that under the charter of the City, and [fol. 683] County of San Francisco you are dedicated to acquiring utilities for municipal ownership?

A. It provides that, yes.

Q. And, of course, there would be no possibility on the part of the City of divesting itself of the Municipal Railway to a privately owned enterprise?

A. I suppose by vote of the people you can do most anything, of course, following a mandate of the people, but I doubt seriously whether they would ever vote to lease or sell the Municipal Railway to a privately owned corporation. ~~Operating under the 5-cent basis, operating at a profit, a profit now of over a million dollars a year we have accumulated a good surplus and willing to spend that money for equipment if and when the Federal Government will permit us to.~~

Q. How would you construe the vote of the people relative to the revenue bond issue concerning an increase in fare? Could you make any interpretation of that? As I recall the situation the revenue bond proposition was submitted to the people on the basis that there would be an increase of fare to 6 cents, is that correct?

A. Well, it would be possible to operate on a basis of 6 cents if it was one ownership.

Q. Yes, that—

A. That is under municipal ownership. I am not speaking of privately owned companies now.

Q. That was generally the thought given to the voters that if they would acquire the Market Street Railway that a 6-cent fare would probably be the amount?

[fol. 684] A. It was possible to operate at a profit on that basis.

Q. Now, did you form any opinion, as a result of the last vote, that the people, by their vote in refusing to authorize the issuance of revenue bonds, that they are adverse to paying a 6-cent fare? Did you form any such conclusion?

A. Well, I can not answer for what people think or why they voted "yes" or "no." All I can say is that when it was submitted to the people, the purchase of the Spring Valley Water Company, it was submitted at least 4 or 5 times before the people eventually voted for it, and if the people of our City had the facts I am sure they would have voted for the purchase in the original—at the first election because at that time we could have acquired the property, I think somewhere along 34 or \$32,000,000. I forget the exact figure. At any rate that was a real bargain, but the people did not vote for it and they did vote for it, 5 or 6 elections, some few years later, and the Spring Valley Water Company deleted a great deal of their property and boosted the price from thirty-three to four million dollars. If they had originally—if they bought it at the original election, why, we would have had all the property. But that is water under the bridge. This matter, as far as I am concerned it is a matter of importance to the people and, with the help of those who are vitally concerned in our problem particularly during this emergency, the Office of Defense Transportation, the Public Utilities Commission, I think that we ought to get together and see what plan could be worked out wherein the City would acquire the Market Street Railway Company. I am not here talking as a salesman for the Market Street Railway, but to arrive at some plan whereby we can solve our problem.

Mr. Holms: Now, that is all, if your Honor please, that I believe the Mayor has to say at this time, but we would be very glad now for any of the Commission staff or the Market Street Railway to ask him questions, we will be pleased to have him answer them.

Mr. Appel: I have no questions of the Mayor.

Mr. Cassidy: Nothing more.

Commissioner Baker: I am very much afraid, Mayor, that you are going to escape without cross-examination.

The Witness: That is all right with me. I am very much interested in this problem, I want you to know that, Mr.

[Vol. 522]

CASE 4680 EXHIBIT NO. 23

Witness Cahill

Date Sept. 15, 1943

Public Utilities Commission Municipal Railway

	Motormen	Conductors	Total FRH
Platform Personnel			
Maximum Shortage	110	100	210
Shortage start of Advertising Nov. 1942	110	100	210
Shortage as of Sept. 15, 1943	60	20	80

	Wages		6-30-43		7-1-43		Increase	
	Per Hr.	Day	Per Hr.	Day	Per Hr.	Day	Per Hr.	Day
Motormen, Conductors, and Street Car Operators (Female)								
First 6 months	\$.80	\$6.40	\$.85	\$6.80	\$.05	\$.40		
Second 6 months	.82½	6.60	.87½	7.00	.05	.40		
Third 6 months	.85	6.80	.90	7.20	.05	.40		
Thereafter	.87½	7.00	.92½	7.40	.05	.40		
Time worked in excess of 8 hours per day and 48 hours per week compensated at 1½ times the rates of pay.								
Additional for instructing new employees	.10	.80	.10	.80	—	—		
New employees paid as Trainees	.37½	3.00	.85	6.80	.47½	3.80		

Bus Operators								
First 6 months	.87½	7.00	.90	7.20	.02½	.20		
Second 6 months	.87½	7.00	.92½	7.40	.05	.40		
Third 6 months	.87½	7.00	.95	7.60	.07½	.60		
Thereafter	.87½	7.00	.97½	7.80	.10	.80		
Time worked in excess of 8 hours per day and 48 hours per week compensated at 1½ times the rates of pay.								
Additional for instructing new employees	.10	.80	.10	.80	—	—		
Employees paid as Trainees	.87½	7.00	.90	7.20	.02½	.20		

Expenditures on Advertising for Platform Personnel

	Newspaper	Radio	Total
Nov. 1942	\$406.41	\$	\$ 406.41
Jan. 1943	406.82		406.82
Feb.	1,253.73		1,253.73
March	1,247.69		1,247.69
April	1,114.36		1,114.36
May	1,114.36		1,114.36
June	1,282.44	1,358.55	2,640.99
July	1,282.45	1,358.54	2,640.99
Aug.	1,385.00		1,385.00
Sept.	1,385.00		1,385.00
Totals	\$10,878.26	\$2,717.09	\$13,595.35

	July 1943	July 1942	Increase
Cost of Paying Full Time on Report Time	\$1,644.13	\$1,009.89	\$634.24
Cost of Penalty Time by reason of shortage of Platform Men	7,031.43	4,403.80	2,627.63
San Francisco, Calif. Sept. 15, 1943.			

Kahn, Sept. 15, 1943

Decision No. 31472

Before the Railroad Commission of the State of California

Application No. 21115 (Second Supplemental)

In the Matter of the Application of MARKET STREET RAILWAY COMPANY, for an Order of the Railroad Commission of the State of California Authorizing Emergency Increases in Certain Fares

William M. Abbott and Max Thelen, for Market Street Railway Company, Applicant.

John J. O'Toole, City Attorney, and Dion R. Holm, Deputy City Attorney, for the City and County of San Francisco, Protestant.

Frank S. Richards and Thomas K. McCarthy, for East Bay Transit Company and Key System, Interested Parties.

Edward P. E. Troy, in propria persona.

By the Commission:

Fourth Supplemental Opinion

In this supplemental application authority is sought to establish a basic 7-cent fare to replace the existing 7-cent fare with four tokens for 25 cents, on the lines of the Market [fol. 524] Street Railway thus eliminating the present token fare.¹

(1)

Item	Present Fare Structure	Proposed Fare Structure (2nd Suppl. App.)
Fares in San Francisco, other than on interurban cars, with free transfers (Tokens shall sell at the rate of 4 for 25 cents)	7¢ cash or one token	
Cash fare in San Francisco, other than on interurban cars, with free transfers		7¢
School children (S.F.) with free transfers to other lines of the company for continuous travel in the same general direction	16 rides for 50¢	16 rides for 50¢

Public hearings were conducted before the Commission en banc at San Francisco, on November 1st, 4th and 7th, 1938, and the matter is now under submission and ready for decision.

A general discussion of this carrier's operations from a physical, financial and operating standpoint appears in the former decisions in this proceeding. As no good cause would be served by repeating it herein this opinion and order will pick up the record from the point it was left by [fol. 525] the prior decisions.²

In Decision Nos. 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory.³

Sunday and Holiday Pass, for use in San Francisco	25¢	25¢
South San Francisco Line	7¢ cash or one token	7¢
San Mateo Line	7¢ cash or one token where 5¢ is charged at present, and no change in balance of present fare structure*	7¢ cash fare, elim- inating sale of tokens at the rate of 4 for 25¢ fare to be in accord- ance with tariff filed with Railroad Commission May 23, 1938

* Present refers to May 9, 1938

² By Decision No. 29889, dated June 21, 1937, applicant was authorized to charge 2¢ for transfers to be superimposed upon its basic 5¢ fare. This transfer charge became effective July 6, 1937.

By Decision No. 30849, dated May 9, 1938, applicant was authorized to change its basic 5¢ fare, with a charge of 2¢ for a transfer, to a level of 7¢ cash in combination with four tokens for 25 cents. This new fare structure became effective May 29, 1938.

(3) In Decision No. 29889 the opinion states as follows:

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place

This is the third time applicant has been before the Commission since April 1, 1937, seeking an increase in its fares. We now have the results of operation that obtained following the two fare charges referred to above, after the company departed from its basic 5 cent fare; namely, a charge of 2 cents for a transfer from July 6, 1937, to May 29, 1938, and a 7 cent cash fare with four tokens for 25 cents from May 29th to the present time.

The evidence adduced at the hearings on this second supplemental application may be summarized as follows:

Financial Position

The record shows that the Market Street Railway Company, as of August 31, 1938, had outstanding \$31,926,450.00 par value of capital stock segregated as follows:

Prior preference stock, 6% cumulative dividends from April 1, 1920	\$11,618,500.00
Preferred stock, 6% dividends cumulative from April 1, 1921	4,986,800.00
Second preferred stock, 6% non-cumulative dividends	4,673,700.00
Common Stock	10,647,400.00

No dividends have been paid on the prior preference stock since January 1, 1924. No dividends have ever been paid on the preferred, second preferred or common stock.

the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

The following is taken from Decision No. 30849:

"A careful review of this record leads to the conclusion that applicant should be authorized to put into effect a basic fare of seven cents cash, with four tokens for 25 cents, with the understanding that the proceeding will be held open for further investigation and study, and if upon a more complete record it appears that this fare structure should be changed, such an order will be entered."

As of September 30, 1938, Market Street Railway Company reports \$4,725,000 of its first mortgage 7 per cent bonds outstanding in the hands of the public. In addition, \$2,361,500 of its first mortgage 7 per cent bonds were alive in the sinking fund. The bonds are dated April 1, 1924, and are due April 1, 1940. The interest is payable quarterly. The payment of the bonds is secured by a trust indenture which is a lien on all the property owned by the company. The indenture obligates the company to pay into the regular sinking fund \$75,000 quarterly, and the interest accruing [fol. 527] on the bonds held alive in the sinking fund. The company has not made sinking fund payments due July 1, and October 1, of the current year. The trust indenture also obligates the company to pay into a special sinking fund, the proceeds realized from the sale of property released from the lien of the indenture. Such proceeds must be used to acquire bonds, which are cancelled.

The record shows that the company has not been able to redeem its 7 per cent bonds through the issue of bonds carrying a lesser interest rate. Its bond issue in relation to the investment in its property is not excessive.

Because of the purchase of equipment, the company is indebted to The J. G. Brill Company in the sum of \$32,724.00 and to Twin Coach Company of Kent, Ohio, in the sum of \$20,965.00.

Its current liabilities as of August 31, 1938, are reported at \$2,359,261.39 segregated as follows:

Loans and notes payable	\$1,375,626.90
Audited accounts and wages payable	901,752.20
Matured interest and rents unpaid	17,429.25
Accrued interest and rents payable	64,453.04
Total	\$2,359,261.39

The loans and notes payable include a \$75,000.00 three per cent note payable to Wells Fargo Bank & Union Trust Co.; \$400,000.00 of four per cent notes payable to Anglo California National Bank; \$24,480.00 of 6% notes payable to Johnson Fare Box Company and \$876,146.90, six per cent open account indebtedness, due Standard Gas and Electric Company.

The audited accounts and wages payable reported at \$901,752.20 include \$660,341.90 due Pacific Gas and Electric

Company. On the latter amount, Market Street Railway Company is paying interest at the rate of 6 per cent per annum.

[fol. 528] Results of Operation

Financial

The following tabulation is taken from Exhibits Nos. 27 and 28:

Item	Exhibit 27 12 Mos. Period Ended Sept. 30, '38	Exhibit 28 9 Mos. Period Ended Sept. 30, '38
Operating Income		
Railway Operating Revenue	\$6,693,858	\$4,877,808
Railway Operating Expenses	5,828,628	4,284,502
Net Revenue Railway Operation	865,230	593,305
Taxes Assignable to Railway Operation	443,266	342,522
Operating Income	421,963	250,783
Total Non-Operating Income	7,932	5,996
Deductions from Gross Income		
Interest on Funded Debt	343,387	254,898
Interest on Unfunded Debt	98,866	76,341
Total Deductions from Gross Income	468,559	350,460
Net Income	38,664	93,681
Depreciation not in the above	500,000	375,000

* Denotes red figure.

The above tabulation shows that applicant has failed to earn its interest charges and depreciation by (a) \$538,664 for the 12 month period ended September 30, 1938, which is an average of \$44,889 per month, and (b) \$468,681 for the 9 month period ended September 30, 1938, which is an average of \$52,076 per month.

For the year ended September 30, 1938, the company's payments to the city other than property taxes amounted to \$196,501.61.⁴

⁴ Exhibit No. 43 shows the following payments to the city for the year ended September 30, 1938:

Paving		\$92,938.61
System Maintenance	\$77,766.97	
Equipment Costs	6,639.61	
Paving Costs—Reconstruction Work	8,532.03	
City's W.P.A. and P.W.A. Projects		36,003.00
Pole Moving	\$25,000.44	
Track Work	11,002.56	
Street Lighting		12,672.00
City Franchise Tax		42,788.00
Golden Gate Park Right of Way		100.00
Ferry Loop Rental (State)		12,000.00
		\$196,501.61

[fol. 529] Traffic

The following tabulation is taken from Exhibit No. 34:

	Passengers Carried (Including Transfer Passengers)		
	Market St. Ry. Co.	Municipal Ry.	Combined
12 mos. ended June 30, 1937	210,547,524	80,754,084	291,301,608
12 mos. ended June 30, 1938	163,265,466	90,290,519	253,555,985
Increase	47,282,058*	9,536,435	37,745,623*
Percentage	22%*	12%	13%*

* Denotes red figure.

It is apparent from this table that the increase in fares on the Market Street Railway has resulted in a substantial diversion from applicant's lines to those of the Municipal Railway. It should be pointed out, however, that beginning July 6, 1937, there was placed in effect a charge of 2 cents for a transfer on applicant's lines. This charge materially reduced transfer riding on the lines of the Market Street Railway.

It is apparent, from the above figures, that the amount of the diversion from the lines of the Market Street Railway to those of the Municipal Railway was in excess of 9,536,435 passengers, as shown above, due to the fact that on the combined operation there was a diminution of travel amounting to 13%. It is only reasonable to conclude that had the two systems been operating on the same fare structure, the loss to each would have been substantially the same on a percentage basis. Therefore, the diversion from the lines of the Market Street Railway to those of the Municipal Railway was substantially in excess [fol. 530] of 10,000,000 passengers.

Estimated Revenue With 7-Cent Fare

With respect to the probable change in gross revenue that would obtain if applicant's plan of eliminating the tokens were placed in effect, this is a speculative matter as is evidenced by the various estimates presented in this record on the subject. The following tabulation shows a summary of these estimates of the probable increase in revenue that would have obtained had the token fare of 6 1/4 cents been replaced by a 7-cent cash fare for the four-month period of June to September, inclusive, 1938:

Estimated Increase
in Gross Revenue
(4-month Period)

Witness and Exhibit Number

Kahn, Exhibit No. 36 (Applicant)	\$110,392
Hall, Exhibits Nos. 45 and 46 (Commission Transportation Engineer)	55,610 60,512
Beck, Oral Testimony, Transcript P. 418 (Valuation & Rate Engineer) (City Attorney's Office, S. F.)	9,931

Exhibit No. 36 is based upon the assumption that the only curtailment in revenue traffic which the company would have suffered with the proposed increase in fare would have consisted of a decrease of 5 per cent of the present token riders on the competitive lines; or in other words, it was assumed that there would have been no decrease or diminution of the token riders on the non-competitive lines.

Exhibits Nos. 45 and 46 are based upon the assumption that there would have been a decrease of 5 per cent in the token rides on non-competitive lines and 8 per cent on competitive lines.

[fol. 531] Mr. Beck assumes in his estimate that there would have been a decrease of 10 per cent of all token riders on the system. In each case it is assumed that this fare change would not have affected the 7-cent cash fare riders.

The record shows that on the average the normal volume of traffic carried on applicant's lines during the four-month period (June to September) is somewhat less than the yearly average. Although the above estimates were made by engineers thoroughly familiar with the local public transportation problem in San Francisco, there is a wide difference of opinion between these estimates.

Abandonment of Lines

Mr. Kahn testified that the company had made an unsuccessful effort to reduce operating expenses through the abandonment of what was considered unprofitable and unnecessary operations from a public convenience and necessity standpoint, by filing petitions with the Board of Supervisors of the City and County of San Francisco seeking authority to abandon certain lines. The company's petition to abandon the operation of the Castro Street cable

line has recently been denied by the Board, and no action has been taken on applicant's petition to abandon operations on a portion of the Guerrero Street line (Tr. pp. 302-303).

Applicant's Exhibit No. 42 shows the financial results of operation of the system by lines for the month of September, 1938. This exhibit shows that the revenue received on many of the lines is less than the average cost of providing the service. This exhibit, when considered in connection with Exhibit No. 22, which is a map showing all the lines of the three local transportation systems serving the city of San Francisco, affords the Commission a basis to study the matter of duplication of service with consideration directed to the question of profitable operation on the various lines of the Market Street Railway.

[fol. 532] "Jitney" Competition

Reference has heretofore been made in said Decisions Nos. 29889 and 30849 in this proceeding to the matter of "jitney" competition. It appears that there are now 136 "jitneys" operating under permits issued by the Police Commission of the City and County of San Francisco. These permits are issued on an annual basis and must be renewed on or about January 1st of each year. The record shows that if this "jitney" competition were eliminated the Market Street Railway's net operating revenue would be substantially increased. The estimates of this increase vary from \$100,000 to \$200,000 a year. The "jitneys" operate in direct competition with certain lines of the Market Street Railway. The Police Commission has never authorized the operation of "jitneys" which would compete with any of the lines of the Municipal Railway. It appears that a very small section of San Francisco, if any, would be deprived of reasonable and adequate transportation service if the "jitney" bus operation were eliminated as practically all their business is picked up along the lines of the Market Street Railway.

One Man Car Operation

At this time approximately one-third of applicant's operations are conducted with one-man street cars assisted by ground loaders at the heavy loading points.

Exhibit No. 30 contains an estimate of increased labor costs of \$303,924 per year that would have obtained if two

men had been employed on the one-man car lines. Ordinances of the City and County of San Francisco prohibit one-man car operation. In July of 1938 the Federal Circuit Court of Appeals reversed a decree of the District Court which enjoined enforcement of these ordinances. (*San Francisco v. Market Street Railway Co.*, 98 Fed. (2d) (Adv. Ops.) 628.) Rehearing was denied in September of 1938. Affirmance of the decision of the Circuit Court by the United States Supreme Court, followed by enforcement of these ordinances, would result in adding substantial operating expenses in labor costs.

[fol. 533] Summary

The problem here before the Commission is a serious one. It directly affects not only the Market Street Railway and that portion of the public using its line, but it affects the welfare of San Francisco as a whole: San Francisco should have an adequate transportation system at the lowest possible cost. The problem is complex because two major street railway systems serve the city. The Municipal line can continue to operate at a 5-cent fare because of inherent advantages in taxes; interest charges; its ability to absorb losses, eliminate unprofitable lines at will, and prevent "jitney" competition; and because of the fact that it has enjoyed a substantial increase in traffic diverted from the Market Street Railway as a result of the differential in fare. The Market Street Railway, operated as a private company, is not so fortunately situated. Its income has not been sufficient to pay currently all of its operating expenses and taxes. It has, as stated, recently failed to pay the amounts due the sinking fund. On August 31, 1938, the company's cash on hand amounted only to \$141,617.58, a sum wholly inadequate to pay any substantial part of its unfunded debt. We do not wish to imply from any statement contained herein that payment of interest on indebtedness, or the payment of the debt is a charge to operating expenses. Both payments are a burden upon the amount realized as a "return" on the value of the company's properties. Attention is called to the interest payments and the indebtedness only to indicate the financial condition of the Market Street Railway Company.

The record shows conclusively that under existing conditions, as a private concern, it cannot operate on a 5-cent

[fol. 534] fare, nor can it continue to operate under present conditions at existing fares. The Market Street Railway, we must assume will continue to be privately operated; as the San Francisco public has twice emphatically rejected a plan for municipal operation.⁵

Thus, we must decide what relief may be afforded the Market Street Railway to prevent a collapse or partial collapse of its service. That this be prevented is particularly important to San Francisco on the eve of the inauguration of the Golden Gate International Exposition.

An important factor in considering a fare structure for a public street transportation system is the matter of a single coin fare for at least the majority of the riders. Applicant's present fare offers this advantage. If, on the other hand, the proposed plan is adopted to establish a 7-cent fare, it will involve a three-coin fare, which would have the disadvantage of slowing up the service as well as other attendant disadvantages.

[fol. 535] Past experience lends doubt as to the wisdom of further increasing fares. Neither the 2-cent transfer charge nor the token fare improved the financial position of the company. However, there is evidence in this record to show that the company may improve its earning position with a 7-cent fare. How extensive this improvement

⁵ "Q. (Commissioner Riley) This may not be a question that you care to answer in detail, but you must have made a study of the Market Street line inasmuch as it was coming ~~to~~, possibly, to your management. Is it your opinion that it could be profitably operated on a 5-cent fare?

A. (Mr. Cahill) No, sir.

Q. Upon what fare structure do you think it could be operated?

A. Inasmuch as I am firmly of the conviction, Mr. Commissioner, that San Francisco is committed to a 5-cent fare, I have never tried to go into any fare structure higher than that, any more than my old friend Mr. O'Shaughnessy did, and Mr. O'Shaughnessy and I are both of the opinion that if the City and County of San Francisco ever took over the Market Street Railway Company it would operate and we both recommended that it operate on a 5-cent fare and that the inevitable deficit be taken up in the tax rate."

(Tr. p. 456)

would be is largely a matter of opinion. The company estimates that it would obtain \$331,176 increased revenue. The Commission's Transportation Engineer estimates the increased revenue would be, at the maximum, about \$180,000 per year, while the Rate Engineer for the city estimates the increased revenue would be about \$30,000 per year.

While the record shows that some financial improvement may be experienced by the company under a straight 7-cent fare, the public should be spared this additional burden if other avenues are open to afford the company the relief to which it is entitled and which under the regulatory laws the Commission must give it.

As we view the evidence before us, the present financial plight of the Market Street Railway is caused by three major factors. First, the Municipal Railway fare of 5 cents, which has resulted in a substantial diversion of traffic from the lines of the Market Street Railway; secondly the jitney bus competition; and thirdly, the inability of the Market Street Railway to abandon its non-profitable lines.

“A. (Mr. Cahill) In my opinion there is no question that there are a number of lines the same as those that Mr. Kahn has named which should be deleted from the Market Street Railway Company's system.” Transcript, P. 459.

“Commissioner Riley” I failed to take into account the fact that the Market Street Railway has jitney competition. You have no jitney competition? A. (Mr. Cahill) No, that is one of the reasons why we have been more successful.

Q. Do you feel that jitney service is required in the city? A. I believe that the paramount interests of the city require mass transportation to be taken into consideration, and before any other type of mass transportation is transportation by street cars under our present system. I think that the Market Street Railway could provide service enough to carry all the people along Mission Street, for example, but they won't if they are not offered the passengers, and I would not blame them, neither would I. However, that is another thing which I believe lies entirely in the jurisdiction of the Board of Supervisors of San Francisco—I am not so sure. Is that right, Mr. Holm?” Transcript, P. 460.

[fol. 536] If the Municipal Railway were competing upon equal terms with the Market Street Railway, at a 5-cent fare, its financial condition would be at least equally precarious. Probably the best solution of the problem would be a universal 6-cent fare in San Francisco but, as the Commission has no jurisdiction over the Municipal Railway, it would be an idle act for this Commission to recommend this fare.

However, we believe the earning position of the Market Street Railway may be materially improved without resorting to a further increase in fares. The two remaining factors which have caused the distressed financial condition of the Market Street Railway are "Jitney" bus competition and the failure to abandon non-profitable lines.

Elimination of "jitney" bus competition, which has never been permitted on streets paralleling the Municipal Railway, will result in a gain in revenue of approximately \$250,000 per year, excluding increased operating costs. The failure of the Market Street Railway to obtain authority of the Board of Supervisors to abandon its non-profitable lines has also deprived applicant of the opportunity to better its financial position. In this connection, however, it may be said fairly that the efforts of the company along these lines has been perfunctory. Rather than presenting before the Board of Supervisors a comprehensive plan, they have approached the problem in a piece meal fashion. If all, or the major part of their non-profitable lines were abandoned, the savings resulting therefrom, plus the additional revenue obtained from the elimination of "jitney" bus competition, would place the company in a better financial condition than if the Commission authorized the straight 7-cent fare. And if the cooperation of the city is obtained to effectuate these recommendations, the riders of the Market Street Railway would be saved thousands of dollars annually. In reaching this conclusion, however, we must point out that a great portion, if not all, of the benefits derived from this plan would be obliterated if the city finally prevails in its program of eliminating one-man car operation. The lines to be abandoned may inconvenience a portion of the public, but their abandonment will not leave this part of the public without any transportation facilities, as the abandoned lines will be in close proximity to other street car or bus lines.

Findings

A careful review of the record herein impels the following conclusions:

First—Applicant Market Street Railway Company cannot, under existing conditions, maintain an adequate transportation service at a 5 cent fare, nor under its present fare structure.

Second—Under the circumstances disclosed by the record the elimination of "jitney" competition together with the abandonment of operation, in whole or in part, of the lines hereinafter specified in the order, will place applicant in a better earning position than will the establishment of a straight seven cent fare.

Third—Applicant should immediately petition the Board of Supervisors of the City and County of San Francisco for such authority or permission as it may be necessary to obtain from the municipality in order to abandon operation, in whole or in part, of those lines hereinafter specified in the order.

Fourth—Applicant should immediately petition the appropriate officers or boards of the City and County of San Francisco for such form of relief as may be necessary in order to eliminate "jitney" competition.

Fifth—Should the authority and relief mentioned in the two preceding paragraphs not be accorded and made effective on or prior to January 1, 1939, the only alternative is to permit an increase of fare to 7 cents, such increase to become effective on January 1, 1939.

[fol. 538]

Supplemental Order

Good cause appearing, It is ordered as follows:

I—Subject to the conditions hereinafter set forth in Paragraphs II and III of this order, Market Street Railway Company is hereby authorized to file the following schedule of fares with the Commission, said schedule to become effective on January 1, 1939, it being found that the increases therein contained are justified in the event that the authority and relief hereinafter mentioned in Paragraphs II and III of this order are not accorded applicant

by the City and County of San Francisco as of January 1, 1939:

"Cash fares in San Francisco other than on interurban cars, with free transfers	7 cents
School children (San Francisco), with free transfers to other lines of the company for continuous travel in the same general direction, 16 rides for	50 cents
Sunday and Holiday pass, for use in San Francisco	25 cents
South San Francisco line	7 cents

San Mateo line 7 cents cash fare, eliminating sales of tokens at the rate of 4 for 25 cents, fare to be in accordance with tariff filed with Railroad Commission on May 23, 1938."

II—Market Street Railway Company is hereby directed to petition forthwith the appropriate boards or officers of the City and County of San Francisco for such authority or permission as may be necessary in order to abandon operation, in whole or in part, of the lines hereinafter specified in Paragraph III of this order, and is also directed to petition forthwith said boards or officers for such form of relief as may be necessary in order to eliminate "jitney" competition. Should such authority and relief be accorded applicant and made effective on or prior to January 1, 1939, the present application for authority to increase fares is hereby denied.

[fol. 539] III—In so far as this Commission may have jurisdiction, Market Street Railway Company is hereby authorized to abandon operation, *in whole or in part*, on such of the following lines as to which abandonment may be sought by applicant and authorized or permitted, on or prior to January 1, 1939, by the appropriate boards or officers of the City and County of San Francisco:

Number	Name
23	Richland Avenue
8	Market Street
24	Divisadero Street, O'Farrel to Laeto
30	Army Street
35	Howard Street

Number	Name
	South San Francisco
	Sacramento Cable
	Castro Cable
54	Sunset Coach
10 and 26	Guerrero Street (Rearrangement of service on Nos. 10 and 26 lines).

IV—The Commission reserves the right to alter, amend or revoke the authority herein granted and to make such further orders as to it may seem right and proper.

V—Except as otherwise specified above, the effective date of this order shall be the twentieth day after the date hereof.

Dated, San Francisco, California, this 23rd day of November, 1938.

Ray C. Wakefield, Leon O. Whitsell, Ray L. Riley,
Commissioners.

Certified as a true copy.

(Sgd.) H. G. Mathewson, Secretary, Railroad Commission of the State of California.

[fol. 540]

CASE 4680

Kahn Exhibit No. 25

Filed 9-15-43

Decision No. 31603

Before the Railroad Commission of the State of California

Application No. 21115

(Second Supplemental)

In the Matter of the Application of MARKET STREET RAILWAY COMPANY, for an order of the Railroad Commission of the State of California authorizing emergency increases in certain fares.

By the Commission:

Fifth Supplemental Order

Market Street Railway Company in its Second Supplemental Application, filed on December 14, 1938, advised

the Commission that it had filed with the Board of Supervisors of the City and County of San Francisco requests (1) for the repeal of the ordinances passed by said Board of Supervisors authorizing and permitting the operation of the so-called "jitneys" in said city, as set forth in Section II of said Decision No. 31472, and (2) to abandon the operation, in whole or in part, of street railway service as delineated in Section III of the order in said Decision No. 31472. These filings were made pursuant to the provisions of Decision No. 31472, dated November 23, 1938. On December 12, 1938, said Board of Supervisors denied said requests. Applicant may now place in effect on January 1, 1939, the fares prescribed in Section I of said decision.

In said Second Supplemental Application applicant requests authority to use tokens as a coin of convenience to the public, said tokens to be sold at the rate of five for thirty-five cents, each token to have the value of one cash fare.

It appears that the request is reasonable and should be granted, therefore

It is hereby ordered that Market Street Railway is authorized, on and after January 1, 1939, to use tokens to be sold at the rate of five (5) for thirty-five (35) cents and each token to have a value of one cash fare. In all other respects Decision No. 31472 shall remain in full force and effect.

[fol. 541] Dated at San Francisco, California; this 27th day of December, 1938.

Ray C. Wakefield, Frank R. Devlin, Carl C. Baker,
Commissioners.

Certified as a true copy.

(Sgd.) H. G. Mathewson, Secretary, Railroad Commission of the State of California.

Filed 9-15-43

Market Street Railway Company

Manpower and Employment

As of September 1, 1943, the Market Street Railway Company had on its payroll 1949 employees. We lacked the following number of employees to fill our scheduled needs:

Platform employees	119
Track Maintenance employees	44
Equipment Maintenance employees	52
Other Personnel	14
<hr/> Total	<hr/> 229

The above shortage of personnel has not materially affected our ability to serve the Shipyards and other War Industries or the public generally, best proven by the fact that in August 1943 we operated 95.09% of our scheduled runs. This was accomplished by employees voluntarily working overtime.

Likewise, track maintenance and equipment maintenance work has been carried on satisfactorily, the shortage of help being partially met by employees voluntarily working overtime. The Track Department employees for some months have been working 60 hours per week instead of 48 hours per week, and the Elktion Shop employees have been working 48 hours instead of 40 hours per week.

[fol. 543] Were we permitted to operate one-man cars in San Francisco, we would gain sufficient manpower to not alone fill all of our schedules but to augment our service very materially.

Total Number of Employees

	Jan. 1, 1942	Jan. 1, 1943	Sept. 1, 1943
Platform employees	1,331	1,355	1,315
Equipment Maintenance	231	269	271
Track Maintenance	144	129	118
Clerical and other employees	222	231	245
<hr/> Total	<hr/> 1,928	<hr/> 1,984	<hr/> 1,949
Total Number of Employees in Armed Forces	30	149	163

Labor Turnover

	Year 1942	8 Mos. 1943
Platform employees.....	714	806
Equipment Maintenance.....	205	286
Track Maintenance.....	80	26
Clerical and other employees.....	101	94
Total.....	1,100	1,212

Resigned or Entered Armed Forces

	Year 1942	8 Mos. 1943
Platform employees.....	690	846
Equipment Maintenance.....	167	284
Track Maintenance.....	95	37
Clerical and other employees.....	92	80
Total.....	1,044	1,247

[fol. 544] The company suffered a net loss of 35 employees during the first 8 months of 1943.

In July 1942, the company started to employ women for work as conductors. In subsequent months the plan of using women for platform work was expanded to cover employment as motorwomen and as coach operators.

It is interesting to note that the Market Street Railway Company was one of the first transit companies on the Pacific Coast to employ women for platform work. Our experience in this regard has been as follows:

Women Employed in Transportation Department

	Year 1942	8 Mos. 1943
Employed		
Motorwomen.....	30	49
Conductorettes.....	171	116
Coach Operators.....	6	27
	207	192
Resigned		
Motorwomen.....	15	38
Conductorettes.....	70	112
Coach Operators.....	0	18
	85	168

As shown, we have employed 399 women and lost 253, leaving a net of 146. Women have proven entirely satisfactory as conductorettes, motorwomen and coach operators. However, stability of employment has been disappointing.

[fol. 545] Help Wanted Advertising

Newspaper

From July 17, 1942 to August 12, 1943 the company ran advertisements 331 times in the four San Francisco daily

papers, as well as other newspapers, as shown in the following tabulation.

July 17, 18, 1942	News, Call-Bulletin	
" 17, 18, 19, 1942	Chronicle, Examiner	
August 2, 1942	Chronicle, Examiner	
" 6, 7, 8, & 9, 1942	Chronicle, Examiner, News, Call Bulletin, Budde Pub.	
September 8, 1942	Chronicle, Examiner, News, Call Bulletin	
" 20 & 21, 1942	Chronicle, Examiner	
" 23, 24, and 25, 1942	Chronicle, Examiner, News, Call Bulletin	
" 27, and 28, 1942	Chronicle, Examiner	
November 7, 1942	News	
" 8, 1942	Chronicle, Examiner	
" 11, 1942	Call Bulletin	
" 13, & 16, 1942	Call Bulletin, Modesta Bee, Napa Daily Register, Lodi Times, Santa Rosa Rep Santa Rosa Dem. Petaluma Argus, Lodi Sentinel, Stockton Record	
November 21 & 22, 1942	Chronicle, Examiner, News, Call Bulletin	
" 29 & 30, 1942	Chronicle, Examiner	
" 30, 1942	News, Call Bulletin	
December 9, 10, 11 & 12, 1942	Chronicle, Examiner, News, Call Bulletin	
" 10, 1942	Chronicle, News, Call Bulletin	
" 11, 1942	Examiner	
" 12, 1942	L'Italia	
January 3, 4 & 5, 1943	Examiner, News, Call Bulletin	
" 3, 4, 5 & 6, 1943	Chronicle	
" 9 and 11, 1943	News, Call Bulletin	
" 10 and 11, 1943	Chronicle, Examiner	
" 16, 18, & 19, 1943	News, Call Bulletin	
" 17, 18, & 19, 1943	Chronicle, Examiner	
" 23, 25, & 26, 1943	News, Call Bulletin	
" 24, 25, & 26, 1943	Chronicle, Examiner	
February 24, 25, & 26, 1943	Chronicle, Examiner, News, Call Bulletin	
March 2, 3, 4, 5, 6, 7, & 8, 1943	Chronicle, Examiner, News, Call Bulletin	
" 7, 8, 9, 10, 11, 12, & 13	Chronicle, Examiner, News, Call Bulletin	
" 10, 11 and 12, 1943	Chronicle, Examiner	
" 10, 11 and 12, 1943	News, Call Bulletin	
[fol. 546]		
April 23, 24, and 25, 1943	Chronicle, Examiner	
" 23, 24, and 26, 1943	News, Call Bulletin	
May 25-28, 1943	Chronicle	
" 25-28, 1943	Examiner	
" 25-28, 1943	News	
" 25-28, 1943	Call Bulletin	
July 6-9, 1943	Chronicle (2 ads)	
" 5-7, 1943	News (2 ads)	
" 9-10, 1943	Examiner	
" 9-10, 1943	Call Bulletin	
July 16-17	Chronicle	1 column-6 inches
July 18-19	Chronicle	1 column-1½ inches
July 16	Examiner	1 column-4½ inches
July 17	Examiner	1 column-8 inches
July 16-17	News	1 column-6 inches
July 16-17	Call-Bulletin	1 column-6 inches
July 23-24		
25-26	Chronicle	1 column-6 inches
July 23-24-25	Examiner	1 column-6 inches
July 23-24	News	1 column-6 inches
July 23-24	Call-Bulletin	1 column-6 inches
Aug. 1-2-3-4	Chronicle	1 column-6 inches
Aug. 1-2-3	Examiner	1 column-5¼ inches
July 30-31	News	1 column-6 inches
July 30-31	Call-Bulletin	1 column-6 inches

Aug. 2-3-4	News	1 column—6 inches
Aug. 2-3-4	Call-Bulletin	1 column—6 inches
Aug. 5-6-7	Chronicle	1 column—6 inches
Aug. 5-6-7	Examiner	1 column—6 inches
Aug. 5 and 7	News	1 column—6 inches
Aug. 5 and 7	Call-Bulletin	1 column—6 inches
Aug. 8-9-10	Chronicle	1 column—6 inches
Aug. 8-9-10-11-12	Examiner	1 column—6 inches

Cost of the above advertising was approximately \$8,000.00. Photostat copies of typical advertisements for help are made a part of this Exhibit.

[fol. 547] Radio

During May and June 1943, the company advertised for help over Station KGO Blue Network using 35 spot announcements. The total cost of this advertising was \$274.00.

Posters

Posters advertising for help wanted have been used practically continuously during the past year. Protostat copies of typical posters are made a part of this Exhibit.

Outdoor Advertising

Outdoor signs on all of the company buildings advertising for help have been employed. Photograph of typical outdoor sign is made a part of this Exhibit.

Signs on Vehicles

One street car and one motor coach, as per photographs made a part of this Exhibit, are now being employed for help wanted advertising. These vehicles of course are in regular passenger service.

Employee Bonus Plan

Photostat copy of letter addressed to all employees of the Company by President Kahn on April 6, 1943 offering inducement to employees of the company to introduce applicants is made a part of this Exhibit. Since the plan was introduced, about 50 new employees have been obtained.

[fol. 548] Part Time Employees

In November 1942, the company decided to hire part time platform employees; in other words, men regularly

employed outside concerns. There are employed at the present time 113 men on a part time basis. These men are used primarily to fill tripper schedules operated during the morning and evening peak hours; also to fill regular Sunday and holiday schedules.

Pay While Training

In July 1943, the company started paying beginners full rate of platform pay to students while training instead of paying one-half of the beginners' rate as had been the plan for approximately the past year. This change was made to stimulate employment of new persons and has a beneficial effect.

Order No. 9328—War Manpower Commission

On April 8, 1943, the War Manpower Commission prescribed certain regulations governing employment in essential activities, which regulations became effective 12:01 AM Sunday, April 18, 1943. Transportation service was classed as an essential activity.

In accordance with the program of stabilization and utilization, and specifically Article 2 of that program, the company and Carmen's Union Division 1004 nominated members of the Local Committee to be organized in our company. This committee, an official subordinate agency of the Area War Manpower Committee, started to function on May 6, 1943.

[fol. 549] Since that date up to September 1, 1943, the Committee considered 135 three-day-notice applications resulting in 63 rejections and the issuance of 72 clearances.

Manning Tables—Replacement Schedules

Under date of July 12, 1943 the Market Street Railway Company made formal application to the War Manpower Commission to participate in the manning table plan. This application was accepted by the War Manpower Commission.

On August 2, 1943 the company filed replacement schedules with the Selective Service System, California State Headquarters, and received approval on the same date, acceptance No. 691 being assigned.

Summary

As shown, during the first 8 months of 1943, the company has employed 1,212 persons. This has only been accomplished through an aggressive employment policy and through the use of the various expedients aforementioned.

LVN:MLB. 9-10-43.

(Here Follows 1 Paster, Side Folio 550)

[fol. 550]

Market Street Railway Company

Month	Average Daily Runs Scheduled					Total Men Req. to Operate Reg. Runs & Trippers	Number of Runs Operated	Number of Runs Not Operated.	% of Sched. Runs Operated
	Runs		Trippers		Total				
	2-Man	1-Man	2-Man	1-Man					
Jan. 42.....	422	193	9		615	1055	615		100.00
Feb. 42.....	421	193	11		614	1057	614		100.00
Mar. 42.....	422	193	7		615	1051	615		100.00
Apr. 42.....	427	198	4		625	1060	625		100.00
May 42.....	434	198	4		632	1074	632		100.00
Jun. 42.....	434	198	4		632	1074	632		100.00
Jul. 42.....	441	199	2		640	1085	640		100.00
Aug. 42.....	435	200	2		635	1074	635		100.00
Sep. 42.....	450	196	2		646	1100	646		100.00
Oct. 42.....	457	196			653	1110	653		100.00
Nov. 42.....	457	196			653	1110	651	2	99.70
Dec. 42.....	457	196			653	1110	645	8	98.79
Jan. 43.....	457	196			653	1110	642	11	98.32
Feb. 43.....	461	196			657	1118	649	8	98.78
Mar. 43.....	468	188			656	1124	644	12	98.18
Apr. 43.....	467	194			661	1128	643	18	97.28
May 43.....	467	194			661	1128	637	24	96.37
Jun. 43.....	475	193			668	1143	630	38	94.32
Jul. 43.....	453	189	36	3	642	1170	606	36	94.40
Aug. 43.....	442	189	55	3	631	1186	600	31	95.09

Note: The above figures do not include "Relief" men for regular men's day off.

[fols. 551-563] (Photographs of advertisements, and of a letter addressed to employees, used by Market Street Railway Company in attempting to secure additional employees, attached as exhibits to statement re Manpower and Employment, Market Street Railway Company, filed September 15, 1943, as Exhibit No. 26 in the Railroad Commission proceedings, omitted in printing.)

[fol. 564] CASE 4680—NEWTON EXHIBIT No. 27

Filed 9-15-43

The Market Street Railway Company

Service Complaints Received from the Railroad Commission Year 1943

January 25, 1943—Complaint from Mrs. Ernest Lenn regarding turning back cars of the No. 1 and No. 2 lines at 32nd Avenue.

June 25, 1943—Complaint from Warren K. Brown regarding service of Third Street motor coach line to Visitation Valley.

July 30, 1943—Complaint from Carroll Newburgh regarding turning back cars of the No. 6 line at Haight and Fillmore Streets after 6:00 P. M.

August 17, 1943—Complaint from Francis Guido regarding the use of "Victory" type cars on the San Mateo line, Daly City to San Bruno.

LVN:MLB 9-11-43.

[fol. 565] CASE 4680—NEWTON EXHIBIT No. 28

Filed 9-15-43

Market Street Railway Company

Service Complaints Received by the Market Street Railway Company by Letter from Patrons Year 1943

January 7, 1943—Chas. F. Patten complained that motor coaches on the No. 19 line failed to stop at Post and Larkin Streets.

January 11, 1943—L. J. Carey complained regarding overcrowded street cars.

January 12, 1943—Mrs. J. F. Calverley asked for service after 1:00 A. M. on the Geneva Avenue coach line.

January 19, 1943—John A. Trinchere asked for better service on the No. 24 Castro-Divisadero-Fillmore Street line.

January 16, 1943—L. D. McDonald complained regarding discourtesy of conductor.

January 19, 1943—M. E. Pelly complained about service on the No. 20 line.

January 22, 1943—R. J. O'Rourke complained regarding service on Cortland Avenue for school children.

[fol. 566] February 3, 1943—C. G. Geneva complained about service on the No. 42 Sansome Street line between 5:30 P. M. and 6:00 P. M.

February 3, 1943—F. E. Phillips complained because motorman passed up a group of school children on the No. 5 McAllister Street line.

February 6, 1943—C. F. Bulotti complained regarding discourtesy of motorman.

February 17, 1943—Ernest Catalano complained of discourtesy of conductor.

March 7, 1943—Timothy Sullivan complained of No. 5 car leaving the Beach terminal ahead of time.

March 16, 1943—Miss Virginia Drake complained of lack of service on the No. 19 Polk Street line.

March 17, 1943—Mae E. Barter complained of lack of service in Visitacion Valley District.

March 26, 1943—H. Rosa complained of service on the No. 15 line to North Beach terminal.

March 31, 1943—Inspector of Naval Material complained of passing up passengers on the No. 20 line at Fourth and Bryant Streets, and at Powell and Ellis Streets.

April 6, 1943—Geo. Zwillinger complained of skip stops and of motorman passing up passenger at Nineteenth Avenue and Fulton Street.

[fol. 567] April 29, 1943—Wm. P. Bear complained of motorman of No. 31 line failing to stop at Octavia and Turk Streets.

May 11, 1943—Logan Paine complained of service on the No. 12 Ingleside line.

June 8, 1943—Thomas Gosland complained of irregular service on the No. 24 Castro-Fillmore coach line.

June 25, 1943—Robt. D. Rossi complained of service on the No. 19 Polk Street line.

June 30, 1943—Peter tum Suden complained regarding service on the No. 7 and No. 17 lines.

July 26, 1943—Mrs. L. Steenberg complained of lack of service on the No. 26 line.

July 31, 1943—Benjamin F. Lickey complained of discourtesy of conductorette.

Total service complaints received by letter—24.

LVN:MLB 9-11-43.

[fol. 568] CASE 4680—NEWTON EXHIBIT No. 29

Filed 9-15-43

Market Street Railway Company

Changes Made in Operating Practices—Revision of Routes in Accordance with Directives or Suggestions of the Office of Defense Transportation

On December 18, 1941, the President of the United States Issued Executive Order No. 8989 creating in the Office For Emergency Management of the Executive Office of the President an Office of Defense Transportation.

By subsequent Orders the functions, duties and powers of the Office of Defense Transportation were further defined, these Orders being No. 9156 May 2, 1942; No. 9214 August 5, 1942; No. 9294 January 4, 1943.

Copies of these Orders are made a part of this Exhibit.

On April 17, 1942, Mr. Joseph B. Eastman, Director, Office of Defense Transportation, issued a statement of policy and outlined therein a 12-point program, as follows:

- (1) Staggered Hours.
- (2) Full Use of All Street Railway Lines.
- (3) Diversion of Traffic to Street Railway Routes.
- (4) Turn Back Service.
- (5) Fewer Stops.
- [fol. 569] (6) Standard of Service in Non-Rush Hours.
- (7) Extension of Bus Services.
- (8) Charter Buses.
- (9) School Buses.
- (10) Street Traffic Control.
- (11) Revision of Schedules.
- (12) Use of Parkway Roads by Buses.

A copy of this statement of policy is made a part of this Exhibit.

In compliance with this program or declaration of policy, the following has been accomplished.

(1) Staggered Hours

On November 16, 1942 a staggered hour plan became effective in San Francisco. This plan was formulated under the jurisdiction of the State Railroad Commission of California, Mr. Warren K. Brown acting as Chairman and working with representatives of the Army, Navy, Maritime Commission, Office of Defense Transportation, Office of Civilian Defense, City and County of San Francisco, Transportation Companies, Large Department Stores, and Other Business Interests.

This plan had very beneficial results especially during the evening peak period, in that it broadened the peak quite considerably and permitted of two round trips of a number of cars during the evening rush hour which were formerly making only one trip during the peak period.

[fol. 570] (2) Full Use of All Street Railway Lines

Street Railway Companies were asked to take immediate steps to obtain the fullest possible use of all operable-rail lines and equipment.

In compliance with this policy motor coaches were removed during the peak periods, or in part, from the No. 25 San Bruno line, No. 36 Folsom line, No. 19 Polk-Larkin line.

Street car service was restored on Army Street on December 7, 1942, operating between Mission Street and Third Street.

(3) Diversion of Traffic to Street Railway Routes

On April 15, 1943 street car service on Third Street from Townsend Street to the foot of the viaduct at Mariposa Street was established, this being done to furnish through street car service to employes of the Bethlehem Steel Company (Union Iron Works) from North Beach (Powell and North Point St.) to Third and Mariposa Street. Street car service on Third Street from North Beach to the Southern Pacific Depot at Third and Townsend Street was augmented and the number of bus trips from Broadway and Kearny Street to the Southern Pacific Depot reduced, thereby re-

leasing said buses for service to the Union Iron Works and Hunters Point Naval Dry Docks.

On May 17, 1943 street car service was restored on the No. 26 line from Daly City via San Jose Avenue to Onondaga and Mission Street, at which time the outer terminal of the No. 26 motor coach line was established at Ocean and [fol. 571] San Jose Avenue, instead of Daly City.

As already outlined, street car service was placed on Polk and Larkin Street from Market to Aquatic Park, thereby releasing buses for service to War Industries.

On March 21, 1943 the No. 10 Glen Park coach line was made a shuttle line operating from Monterey Boulevard and Genesee Street to 29th and Mission Street only, instead of operating to the Ferry Building via Mission Street.

(4) Turn Back Service

In so far as possible, the company placed in effect turn backs on all of its lines thereby conserving manpower and materials as well as to place the service on that portion of the lines where riding density required.

(5) Fewer Stops

In conformity with Office of Defense Transportation policy, 554 stops were eliminated out of 5,057 stops in the Market Street Railway System. A reduction of 10.95% in the number of stops has been made.

It has been the policy of the company not to institute skip-stops on hilly portions of its lines.

(6) Standard of Service in Non-Rush Hours

No material changes have been made in the service rendered by the company in non-rush hours. It is our understanding however that certain recommendations will be made by the Office of Defense Transportation shortly directing reduction of service on certain of our lines during the off-peak periods.

[fol. 572] (7) Extension of Bus Services

No extension of existing bus service has been made since the establishment of the Office of Defense Transportation to other than War Industries. A coach line was established from the Bethlehem Steel Company (Union Iron

Works) from Third and 20th Street to 26th and Castro Street via Third, Army, Guerrero, 26th Street. Also the Silver Avenue coachline was extended from its terminal at Oakdale and Third Street to Hunters Point via Third and Evans Avenue. This routing was changed on September 12, 1943 to reach Hunters Point via Palou Street and Access Road. Also on the same date coach service was inaugurated from Hunters Point to 26th and Castro Street via Evans Avenue, Third Street, Army Street, Guerrero Street, 26th Street.

In the Fall of 1942, direct coach service was established from Broadway and Kearny Street to Hunters Point via Kearny, Third and Evans Avenue. This service has been expanded until in today's operation we have 20 coaches operating direct to Hunters Point during the change of shifts at the Hunters Point Naval Dry Docks. Sixteen of these coaches are operated under lease from the Navy.

(8) Charter Buses

All charter coach service except that work in connection with the War effort was discontinued in April 1942. Since October 1942, the company has been operating from 3 to 5 coaches in contract service for the Western Pipe and Steel Company, South San Francisco, operating from Van Ness Avenue and Bay Street; also from California Street and [fol. 573] Arguëllo Boulevard via Daly City to South San Francisco. This service was approved by the Office of Defense Transportation.

(10) Street Traffic Control—None

(11) Revision of Schedules

Checks have been taken on all lines to insure adequacy of service or inversely, waste of service. Our schedules have been revised practically continuously to meet the present day demands.

(12) Remodeling of Street Cars

Since December 1942, 48 electric street cars have been remodeled so as to increase carrying capacity. These cars are referred to as "Victory" type cars. All of the remodeled cars have folding doors at the ends, these being operated by door engines. The bulkheads and cross seats have

been removed and longitudinal seats installed in the car on either side the full length of the car. Ample stanchions and grab handles have been provided. The aisle width is 60 inches.

[fol. 574]

EXECUTIVE ORDER No. 8989

Establishing the Office of Defense Transportation in the Executive Office of the President and Defining Its Functions and Duties

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to define further the functions and duties of the Office for Emergency Management with respect to the state of war and to assure maximum utilization of the domestic transportation facilities of the Nation for the successful prosecution of the war, it is hereby ordered:

1. The term "domestic transportation" whenever used in this Order shall include railroad, motor, inland waterway, pipe line, air transport and coastwise and intercoastal shipping.

2. There shall be in the Office for Emergency Management of the Executive Office of the President an Office of Defense Transportation, at the head of which shall be a Director appointed by the President. The Director shall discharge and perform his responsibilities and authorities under the direction and supervision of the President. The Director shall receive compensation at such rate as the President may determine and, in addition, shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties.

3. Subject to such policies, regulations, and directions as the President may from time to time prescribe, the Office of Defense Transportation shall:

a. Coordinate the transportation policies and activities of the several Federal agencies and private transportation groups in effecting such adjustments in the domestic transportation systems of the Nation as the successful prosecution of the war may require.

b. Compile and analyze estimates of the requirements to be imposed upon existing domestic transport facilities by the needs of the war effort; determine the adequacy of such facilities to accommodate the increased traffic volume occasioned by the war effort; develop measures designed to secure maximum use of existing domestic transportation facilities; and stimulate the provision of necessary additional transport facilities and equipment in order to achieve the level of domestic transportation services required; and in this connection advise the Supply Priorities and Allocation Board as to the estimated requirements and recommend allocations of materials and equipment necessary for the provision of adequate domestic transportation service.

[fol. 575] c. Coordinate and direct domestic traffic movements with the objective of preventing possible points of traffic congestion and assuring the orderly and expeditious movement of men, materials, and supplies to points of need.

d. In cooperation with the United States Maritime Commission and other appropriate agencies, coordinate domestic traffic movements with ocean shipping in order to avoid terminal congestion at port areas and to maintain a maximum flow of traffic.

e. Perform the functions and exercise the authority vested in the President by the following, subject to the conditions set forth in paragraph 3 of this Order:

(1) Sec. 1 (15) of Interstate Commerce Act as amended, U. S. C. title 49, sec. 1 (15).

(2) Sec. 6 (8) of Interstate Commerce Act as amended, U. S. C. title 49, sec. 6 (8).

f. Survey and ascertain present and anticipated storage and warehousing requirements at points of transfer and in terminal areas; and encourage the provision of increased storage, loading, and unloading facilities where necessary.

g. Represent the defense interest of the Government in negotiating rates with domestic transportation carriers and in advising the appropriate governmental agencies with respect to the necessity for rate adjustments caused by the effect of the defense program.

h. Advise upon proposed or existing emergency legislation affecting domestic transportation, and recommend such

additional emergency legislation as may be necessary or desirable.

i. Keep the President informed with respect to progress made in carrying out this Order; and perform such related duties as the President may from time to time assign or delegate to it.

4. In the exercise of its functions and authority with respect to transportation priorities and preferences, the Office of Defense Transportation shall be governed as to the relative importance of deliveries required for defense by such instructions, certifications, and directives as may be issued by the Office of Production Management pursuant to the provisions of the Executive Order of August 28, 1941, entitled "Delegation and Coordination of Priority Authority;" and the Office of Defense Transportation shall take all lawful steps within the scope of its authority to effect such deliveries through appropriate public or private agencies.

[fol. 576] 5. In the study of problems and in the discharge of its responsibilities, it shall be the policy of the Office of Defense Transportation to collaborate with existing departments and agencies which perform functions and activities pertaining to transportation and to utilize their facilities and services to the maximum. Particularly, the Office of Defense Transportation shall maintain close liaison with the United States Maritime Commission in the consideration of problems involving the relationship of ocean shipping with coastwise and intercoastal shipping and inland transport; with the Interstate Commerce Commission on problems of rates, routing and car service; and with the War and Navy Departments with respect to the strategic movement of troops and supplies by domestic transportation carriers. The Office of Defense Transportation may arrange for the establishment of committees or groups of advisers representing two or more departments and agencies or private transportation groups, as the case may require, to study and develop plans for the coordination and most effective use of existing domestic transportation facilities.

6. To facilitate unity of policy and action and the use of existing governmental services, the heads of each of the following departments and agencies shall designate a re-

sponsible representative or representatives to maintain formal liaison with the Office of Defense Transportation: The Department of War, the Department of the Navy, the Department of the Treasury, the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Interstate Commerce Commission, the United States Maritime Commission, the Civil Aeronautics Board, the Federal Works Agency, the Federal Loan Agency, the Board of Investigation and Research appointed under the Transportation Act of 1940, the Office of Production Management, the Office of Price Administration, the Economic Defense Board, and such additional departments and agencies as the President may subsequently designate.

7. There shall be within the Office of Defense Transportation a Division of Railway Transport, a Division of Motor Transport, a Division of Inland Waterway Transport, a Division of Coastwise and Intercoastal Transport, and such other operating and staff divisions as the Director may determine. The Director may provide for the internal management of the Office of Defense Transportation and shall obtain the President's approval for the appointment of the heads of the above divisions and such other divisions as may be established.

8. Within the limits of such funds as may be appropriated or allocated to the Office of Defense Transportation, the Director may employ necessary personnel and make provision for the necessary supplies, facilities, and services. However, the Office of Defense Transportation shall use [fol. 577] such statistical, informational, fiscal, personnel, and other general business services and facilities as may be made available through the Office for Emergency Management.

Franklin D. Roosevelt.

The White House, December 18, 1941.

(U. S. Code Cong. Service 1941, p. 989)

[fol. 578]

EXECUTIVE ORDER No. 9156

Further Defining the Functions and Duties of the Office of Defense Transportation

By virtue of the authority conferred upon me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered:

1. In addition to the functions, duties and powers conferred upon it by Executive Order No. 8989, approved December 18, 1941, the Office of Defense Transportation shall:

a. Include within the scope of its authority and responsibility, as defined in said order, all rubber-borne transportation facilities, including passenger cars, buses, taxicabs, and trucks.

b. Develop programs to facilitate any continuous adjustment of the Nation and its transport requirements to the available supply of transportation services relying upon rubber.

c. Formulate measures to conserve and assure maximum utilization of the existing supply of civilian transport services dependent upon rubber, including the limitation of the use of rubber-borne transportation facilities in non-essential civilian activities, and regulation of the use or distribution of such transportation facilities among essential activities.

2. The several Federal departments and agencies which perform functions relating to the conservation or use of rubber borne transportation facilities shall, in discharging such functions, conform to such policies, programs, and measures as the Director of the Office of Defense Transportation may prescribe in the execution of the powers vested in him by this order and by Executive Order No. 8989.

3. Nothing herein shall be deemed in any way to limit the functions and authority of the Chairman of the War Production Board under paragraph 4 of Executive Order No. 8989 of December 18, 1941 and paragraph 1a of Executive Order No. 9040 of January 24, 1942, nor the rationing authority delegated to the Office of Price Administration by

War Production Board Directives No. 1 of January 24, 1942, No. 1A of February 2, 1942, No. 1B of February 9, 1942, No. 1C of February 28, 1942, or any other Directive of the War Production Board supplementary thereto.

Franklin D. Roosevelt.

The White House, May 2, 1942.

(U. S. Code Cong. Service 1942, p. 443)

[fol. 579]

EXECUTIVE ORDER NO. 9214

Extending the Authority of the Office of Defense Transportation to Domestic Transportation within the Territories and Possessions of the United States

By virtue of the authority conferred upon me by the Constitution and statutes of the United States, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

In addition to the powers conferred upon it by Executive Order No. 8989 of December 18, 1941, and Executive Order No. 9156 of May 2, 1942, the Office of Defense Transportation shall include within the scope of its authority, as defined in the said orders, all domestic transportation within the territories and possessions of the United States.

Franklin D. Roosevelt.

The White House, August 5, 1942.

(U. S. Code Cong. Service 1942, p. 1022)

[fol. 580]

EXECUTIVE ORDER NO. 9294

Further Defining of the Functions and Duties of the Office of Defense Transportation

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered:

I

1. The term "local passenger transportation equipment" whenever used in this Order shall include buses, street rail-

way cars, trolley coaches, trucks converted for passenger transportation, ferryboats, and other vehicles and vessels used or capable of being used to carry nine or more passengers (including the operator) in public or private carrier service.

2. In addition to the functions, duties, and powers conferred upon it by Executive Order No. 8989, approved December 18, 1941, Executive Order No. 9156, approved May 2, 1942 and Executive Order No. 9214, approved August 5, 1942, the Office of Defense Transportation shall:

a. Advise and assist Federal departments and agencies, State and local governments, and private organizations in surveying the need for and planning the provision of transportation service for the movement of personnel to and from war plants and establishments, and where necessary, initiate and develop such surveys and plans. Due consideration should be given in making such surveys and plans to all transportation needs of each area, including those related to production in the war effort; agricultural as well as industrial, to military and naval establishments, and to essential civilian services.

(b) Review and approve such contracts, agreements, or arrangements hereafter made by Federal departments and agencies or by private firms (except common carriers) holding contracts from such departments and agencies, for the purchase, lease requisition or use of new or used local passenger transportation equipment, as the Director considers necessary to ensure the proper provision of passenger transportation services to war plants and establishments; in the discretion of the Director, review, approve, or direct the re-negotiation of such contracts, agreements, or arrangements now in effect, except those on which final payment has been made prior to the date of this Order.

(c) Advise the War Production Board on the allocation of new local passenger transportation equipment; and, as [fol. 581] necessity arises, recommend to the War Production Board programs and procedures for controlling the transfer and placement of used local passenger transportation equipment.

3. No Federal department or agency or private firm (except common carriers) holding a contract from such depart-

ment or agency shall hereafter complete arrangements for the purchase, lease, requisition, or use of local passenger transportation equipment without giving prior notice thereof to the Office of Defense Transportation, and, if the Director considers it necessary, without submitting the contract, agreement, or arrangement to the Office of Defense Transportation for review and approval. The Office of Defense Transportation shall establish appropriate procedures for carrying out the purpose of this Order and each affected department or agency shall designate an official representative to advise with the Office of Defense Transportation on such matters.

4. Nothing herein shall be deemed in any way to limit the functions and authority of the Chairman of the War Production Board under paragraph 4 of Executive Order No. 8989 of December 18, 1941, and paragraph 1 (a) of Executive Order No. 9040 of January 24, 1942, of the War Shipping Administrator, or of the Interstate Commerce Commission.

5. The provisions of this Order respecting the use of local passenger transportation equipment shall not apply to movements of military and naval personnel when on maneuvers, on trips made under orders, or on other special operations necessary for the prosecution of the war.

II

1. The Office of Defense Transportation shall include within the scope of its authority as defined in this and all other Orders defining its functions all domestic transportation within the territories and possessions of the United States.

2. The Director of the Office of Defense Transportation is hereby designated as the head of any agency which may initiate action for the requisitioning of property under the terms of and in accordance with the procedures established by Executive Order No. 8942, approved November 19, 1941.

Franklin D. Roosevelt.

The White House, January 4, 1943.

(U. S. Code Cong. Service 1943, p. 53)

[fol. 582]

April 17, 1942.

To All Operators of Street Cars and Buses and All Public Authorities Having Regulatory Powers Over Such Operators:

The Office of Defense Transportation, through its Division of Local Transport, is using two means for requiring that existing passenger transport vehicles be utilized to the utmost and that critical materials be conserved.

First, general or specific orders have and will be issued in matters which warrant the direct exercise of the authority vested in the Director by the Executive Order of December 18, 1941.

Second, statements of policy will be made to public authorities and operators of transit vehicles whose cooperation with the objects of this Office is assumed. This is such a statement of policy.

Our present policy in the following matters is determined almost entirely by the stoppage of rubber imports and the desperate need for conserving all the rubber now in our possession. Waste of rubber tires under present conditions is little short of disloyalty to the national interest.

[fol. 583] (1) Staggered Hours

A carefully prepared plan of ~~staggering working~~ store and office hours offers by far the greatest opportunity for increasing the carrying capacity of existing transit vehicles. Regulatory authorities and transit operators should encourage the development of such programs and participate in the preparation of plans for carrying them out.

In communities where the number of buses required in the rush hours can be reduced by opening schools at a later hour, public officials and transit operators should cooperate to attain this objective.

(2) Full Use of All Street Railway Lines

Transit companies and regulatory authorities should take immediate steps to obtain the fullest possible use of all operable rail lines and equipment. This will require discontinuance of bus and trolley coach services which are

being provided over routes where street railway lines are or can be made operable as well as on street railway routes now being served part of the time by buses or trolley coaches.

(3) Diversion of Traffic to Street Railway Routes

Wherever it is practicable to alter schedules and routes so as to divert passengers from present bus lines to street railway routes, such alteration of schedules and routes should be made.

(4) Turn Back Service

On transit routes to outlying districts much capacity is wasted by sending too many vehicles to the outer ends of such routes. This waste should be eliminated by turning back some vehicles at intermediate points, or by operating shuttle vehicles over the outer portions of such routes at less frequent intervals. In other cases, waste should be eliminated by operating shuttle services over branch lines which are presently through routed.

[fol. 584] (5) Fewer Stops

The number of passengers stopping places on bus and street car routes should be reduced wherever possible. A stopping place within 500 feet of another is undesirable and wasteful and should be eliminated. A reasonable standard is to space stopping places at distances of 660 feet to 1,200 feet.

(6) Standard of Service in Non-Rush Hours

The general practice of bus operators is to provide seats in excess of the number of passengers during non-rush hours. This practice should be modified so that buses and trolley coaches carry at least full seated loads during non-rush hours.

(7) Extension of Bus Services

Extension of existing bus routes and inauguration of new routes should be made only to places of defense employment and military and naval establishments or to meet similar situations where failure to provide such additional

service will have a definitely unfavorable effect on the war effort.

(8) Charter Buses

Buses not operated in regularly scheduled service whether run on a chartered or individual fare basis, should be operated only to carry workers to and from places of defense employment or to meet similar situations where failure to provide such service will have a definitely unfavorable effect on the war effort.

Acceptable charter or special business includes transportation of selectees, of groups made up principally of members of the armed forces, of participants in organized recreational activities at military posts, and school children, teachers and other school employees to and from school only, and under appropriate conditions the necessary transportation of under-privileged children.

[fol. 585] Unacceptable charter or special business includes civilian parties to beaches, pleasure resorts, picnic places, points of historic interest, race tracks, baseball and other sporting events.

A bus operator who has filed public tariffs as a charter carrier, should not be subject to any penalty on account of his refusal to accept proffered charter business not compatible with this statement of policy. Regulatory authorities should discourage the acceptance of charter business by one operator which has been refused by another in accordance herewith.

(9) School Buses

It may be necessary in some localities during the period of the war emergency to utilize school buses which are capable of providing safe transportation where established common carriers are unable to provide the service. Operators of school buses should cooperate with transit companies and defense industries located in the vicinity of schools served by them in solving the transportation problems of their communities.

(10) Street Traffic Control

Traffic regulations and controls have generally been operated to facilitate the movement of automobiles. Dur-

ing the present emergency the movement of mass transit vehicles should take precedence, and the efficient movement of such vehicles should be the major consideration in the timing of traffic control devices.

[fol. 586] (11) Revision of Schedules

Operators of transit vehicles should continuously analyze their schedules, first, in order to minimize standing time of vehicles at terminals, and, second, in order to take full advantage of opportunities for saving time as street traffic congestion is reduced. Both of these measures will reduce the number of vehicles required to render a given service.

(12) Use of Parkway Roads by Buses

The use of parkway roads by buses would in many places permit substantial savings in mileage, time and rubber. In such cases, parkway authorities should remove restrictions on bus operation unless the roadway construction is too light to withstand such traffic.

Joseph B. Eastman, Director Office of Defense Transportation.

[fol. 587] CASE 4680—NEWTON EXHIBIT No. 30

Filed 9-15-43

Market Street Railway Company

Inspectors

The company employs at the present time one Chief Inspector, twenty-eight Regular Inspectors, and two Relief Inspectors. It is the duty of these men to supervise the operation of street cars and motor coaches, doing that which may be necessary to preserve proper headway and schedule observance. In case of delays due to any cause it is the duty of the Inspector to restore proper service as promptly as possible. There is made a part of this exhibit statement entitled "Inspector Personnel," also statement entitled "Inspectors on Duty—P. M. Peak."

At the present time the company owns and operates eight motorcycles and these machines are operated by the

Inspectors in order to facilitate their work. The Inspectors report to the Chief Inspector via street telephones strategically located. Also they work in close cooperation with the Dispatchers in the various car barns.

LVN:MLB 9-11-43

[fol. 588]

Inspector Personnel

H. G. Wilson, Chief Inspector

17 Day Districts

11 Night Districts

2 Relief Inspectors

Major Portion Motorized
Covering 20 Hours Spread
Of Operation, Using
8 Motorcycles.

Week Days

District #1.

P. McDermott, Badge #1.

7:45 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 3:00 PM

3:00 PM to 6:00 PM

Turk & Divisadero, on #20, 24 & 31 lines.

Sutter & Fillmore, on #1, 2, 3, 4 & 22 lines.

Off for lunch.

Turk & Divisadero, on #20, 24 & 31 lines.

District #2.

J. Cummings, Badge #2.

7:30 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 2:45 PM

2:45 PM to 4:30 PM

4:30 PM to 5:30 PM

Market Street, 7th to Ferry, all lines.

Market Street from Gough to Ferry, all lines.

Off for lunch.

Market Street, 7th to Ferry, all lines.

Flagman at Geary & Market Street.

District #3.

R. A. Lions, Badge #4.

7:00 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 2:45 PM

2:45 PM to 6:00 PM

Market Street from 7th to Gough, paying particular attention to #19 & 21 lines.

Off for lunch.

Market Street from Gough to Ferry on all lines.

Market Street from 7th to Gough, paying particular attention to #19 & 21 lines.

District #4.

W. Maupin, Badge #7.

7:00 AM to 9:45 AM

9:45 AM to 12:45 PM

12:45 PM to 3:30 PM

3:30 PM to 6:00 PM

Sutter & Fillmore Streets on #1, 2, 3, 4, & 22 lines.

Off for lunch.

Sutter & Fillmore Streets on #1, 2, 3, 4, & 22 lines.

Ferry Terminal, start mission cars.

District #5.

S. Greene, Badge #11.

6:00 AM to 2:30 PM

Broadway & Kearny Streets, all street-car and coach lines.

[fol. 589]

District #6.

R. Wetzel, Badge #34.

7:00 AM to 10:00 AM

10:30 AM to 1:30 PM

1:30 PM to 4:30 PM

4:30 PM to 6:00 PM

S. P. Depot on #15, 16, 42, & 43 lines.

28th & Mission Streets, all Mission and Valencia Lines.

Off for lunch.

Jones and McAllister Streets, placing #5 cars into Market Street in proper places.

District #7.

R. T. Spencer, Badge #6.

6:30 AM to 10:30 AM

10:00 AM to 11:30 AM

11:30 AM to 3:30 PM

All Mission and Fillmore Lines at 16th and Mission Streets.

Off for lunch.

All Mission and Fillmore Lines at 16th and Mission Streets.

District #8.

P. O. Peterson, Badge #10.

7:00 AM to 10:30 AM

10:30 AM to 1:30 PM

1:30 PM to 6:00 PM

28th & Mission Streets on #9, 10, 12, 14, 26, & #40 lines.

Off for lunch.

28th & Mission Streets on #9, 10, 12, 14, 26, & #40 lines.

District #9.

E. Spencer, Badge #17.

7:00 AM to 9:00 AM

9:00 AM to 11:45 AM

11:45 AM to 2:30 PM

2:30 PM to 3:30 PM

3:30 PM to 5:45 PM

Divisadero and Haight Streets on #6, 7, 17, 20, & #24 lines, paying strict attention to #24 line.

Off for lunch.

Both sides of Park from Divisadero to Beach, and Ellis to Haight Streets, watch all lines.

Divisadero & Haight Streets on #6, 7, 17, 20, and #24 lines, paying strict attention to #24 lines.

Haight & Masonic and South Side of Park.

District #10.

H. Cohn, Badge #9.

7:00 AM to 9:00 AM

9:00 AM to 11:30 AM

11:30 AM to 2:30 PM

2:30 PM to 6:00 PM

8th Ave. and Fulton Street on #5, 21, & #31 lines.

Both Sides of Park from Divisadero to Beach and from Ellis to Haight Streets on all lines.

Off for lunch.

8th Ave. & Fulton Street on #5, 21, & 31 lines. During school time take care of Lowell High School for break in afternoon.

[fol. 590]

District #11.

M. P. Boragno, Badge #21.

7:00 AM to 10:00 AM

10:00 AM to 11:30 AM

11:30 AM to 2:30 PM

2:30 PM to 6:00 PM

16th & Bryant Streets on #25, 27 & 22 lines, paying attention to Southern Heights Coach Line.

16th & Mission Streets, all mission and #22 lines.

Off for lunch.

Broadway & Kearny Streets, all street car and coach lines.

District #12.

H. Shurgin, Badge #20.

4:00 PM to 5:30 PM

5:30 PM to 12:30 PM

Placing #31 cars into Market Street.

All Market from 4th to Gough Streets.

District #13.

M. Lewkowicz, Badge #19.

4:30 PM to 5:30 PM

6:00 PM to 1:00 AM

Placing Sutter Cars into Market Street.

All lines south of Market Street from 16th & Mission Streets to Daly City.

District #14.

J. E. Graham, Badge #30.

3:30 PM to 12:00 M. N.

Sutter & Fillmore Streets, on #1, 2, 3, 4, & 22 lines.

District #15.

H. A. Donovan, Badge #26 (Act. Inspector, Serving Probation).

4:30 PM to 5:35 PM

5:45 PM to 1:00 AM

Placing Haight Street cars into Market Street.

South Side of Park on #6, 7, 17, 20, & 33 lines.

District #16.

H. J. Reedy, Badge #28 (Assistant Chief Inspector).
 4:30 PM to 5:40 PM On #41 line at 2nd & Market Streets.
 5:40 PM to 1:00 AM Ferry, East Bay Terminal and in charge of all Districts.
 1:00 AM to 2:00 AM At Perry to take care of boats returning with shipyard workers.

District #17.

I. D. Hester, Badge #23.
 3:00 PM to 6:00 PM 20th & 3rd Streets, take care of Union Iron Works.
 6:00 PM to 11:00 PM S. P. Depot, all coaches south of Market St.
 11:00 PM to 12:00 M. N. 20th & 3rd Streets, take care of Union Iron Works.

[fol. 591]

District #18.

H. Behlendorf, Badge #14.
 2:00 PM to 3:10 PM 16th & Bryant Streets on #22, 25, 27 & #36 lines.
 3:20 PM to 4:00 PM 18th & 3rd Streets on #22 line (Iron Works).
 4:10 PM to 5:30 PM 16th & Bryant Streets on #22, 25, 27 & #36 lines.
 5:45 PM to 10:30 PM 8th Ave. & Fulton Street on #5, 21, & 31 lines.

District #19.

L. Logasa, Badge #15.
 6:45 AM to 8:00 AM 3rd & Revere Streets on 3rd Street Coaches.
 8:00 AM to 10:00 AM Wilde Ave. on 3rd Street Coaches and #25 street cars.
 10:00 AM to 1:00 PM Off for lunch.
 1:00 PM to 5:45 PM Wilde Ave. on 3rd Street Coaches and #25 Street Cars.

District #20.

T. Larsen, Badge #24.
 7:00 AM to 10:00 AM S. P. Depot on #20, 41 & 42 lines.
 10:00 AM to 11:30 AM S. P. Depot on 3rd Street Coaches.
 11:30 AM to 2:30 PM Off for lunch.
 2:30 PM to 6:00 PM S. P. Depot on #20, 41 & 42 lines, also watch 3rd Street Coaches when possible. Pay strict attention to #41 line between 4:25 & 5:35 PM.

District #21:

J. Casey, Badge #35.
 6:30 AM to 11:00 AM All coach lines.
 11:00 AM to 12:30 PM Off for lunch.
 12:30 PM to 4:00 PM All coach lines.

District #22.

W. L. Harrison, Badge #18.
 3:30 PM to 4:10 PM 3rd & Mariposa Streets, #20 line (Iron Works).
 4:10 PM to 5:15 PM First & Mission Streets, Space Mission Cars, and watch East Bay Terminal Cars.
 5:20 PM to 6:00 PM 3rd & Mariposa Streets, #20 line (Iron Works).
 6:00 PM to 9:00 PM All Coach Lines, paying particular attention to #19 line until same is OK, and then ride all coach lines and send in check of service.
 9:00 PM to 10:30 PM Off for lunch.
 10:30 PM to 1:00 AM All Coach Lines, ride same and check service.
 [fol. 592]

District #23.

C. J. Dussourt, Badge #13.
 3:30 PM to 5:40 PM Broadway & Fillmore on #24 line and also watch #22 line.
 5:40 PM to 6:25 PM 8th Ave. and Fulton Street on #5 & 21 lines.
 6:25 PM to 10:30 PM Divisadero & Turk Streets on #24, 20 & 31 lines.
 10:30 PM to 12:00 M. N. North Side of Park on #5, 20, 21, 24 & 31 lines.

District #24.

C. Evans, Badge #27.
3:30 PM to 5:15 PM

(Act. Inspector, Serving Probation).

16th & Mission Streets on all Mission Lines, also #22, 36 & 22 lines.

5:30 PM to 6:00 PM

18th & 3rd Streets on #22 line (Iron Works).

6:15 PM to 11:15 PM

16th & Mission Streets on all Mission Lines, also #33, 36 & 22 lines.

11:30 PM to 12:00 Mn.

18th & 3rd Streets on #22 line (Iron Works).

District #25.

J. Salvato, Badge #36.
4:30 PM to 6:00 PM

Sutter and Kearny Streets, taking care of all Sutter Lines, also spacing 3rd Street Coaches as much as is practical.

6:00 PM to 1:00 AM

Broadway & Kearny Streets on, 3rd Street Coaches and Street Cars, also look over all Cable Lines and take care of Sutter Lines.

District #26.

F. Fox, Badge #8.
7:00 AM to 9:00 AM

At Beach Terminal on #5 & 7 lines keeping headways filled.

9:00 AM to 11:30 AM

Off for lunch.

11:30 AM to 5:30 PM

At Beach Terminal on #5 & 7 lines keeping headways filled.

District #27.

H. Brown, Badge #16.
7:00 AM to 11:00 AM

At Daly City placing #14 cars on headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

11:00 AM to 2:00 PM

Off for lunch.

2:00 PM to 6:00 PM

At Daly City placing #14 cars on headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

[fol. 593]

District #28.

J. P. Haslam, Badge #25.

(Starter, permanent transfer to Inspector list as of September 15th, 1943.)

9:00 AM to 12:00 M.

First & Mission Streets, all Mission Lines and East Bay Terminal Lines.

12:00 M to 12:30 PM

Sutter and Sansome Streets, spacing outbound Sutter cars.

12:30 PM to 1:30 PM

Off for lunch.

1:30 PM to 4:00 PM

First and Mission Streets, all Mission Lines and East Bay Terminal Lines.

4:00 PM to 6:00 PM

Sutter & Sansome Streets, load and space Sutter cars.

Relief Inspectors.

Block #1, Worked by Insp. J. S. Gyorgy, Badge #3.

Working as follows:

District #16, 12, 17, off, 4, 9, 5.

Block #2 worked by Insp. J. S. Ferretti, Badge #22.

Working as follows:

District #15, 18, 13, 23, 24, off.

9-6-43, PWF.

[fol. 594]

Inspectors on Duty—PM. Peak

4:00 P. M. to 6:00 P. M.

District #1.

P. McDermott, Badge #1.

4:00 PM to 6:00 PM

Turk & Divisadero, on #20, 24 & 31 lines.

District #2.

J. Cummings, Badge #2.
4:00 PM to 4:30 PM
4:30 PM to 5:30 PM

Market Street, 7th to Ferry, all lines.
Flagman at Geary and Market Streets.

District #3.

R. A. Lions, Badge #4.
4:00 PM to 6:00 PM

Market Street, from 7th to Gough Streets, all lines;
paying particular attention to #19 & 21 lines.

District #4.

W. Maupin, Badge #7.
4:00 PM to 6:00 PM

Ferry Terminal, Start Mission Cars.

District #6.

R. Wetzel, Badge #34.
4:00 PM to 6:00 PM

Jones & McAllister Streets, placing #5 cars into
Market Street in proper places.

District #8.

P. O. Petersen, Badge #10.
4:00 PM to 6:00 PM

28th & Mission Streets on #10, 12, 14, 26, 9 & 40
lines.

District #9.

E. Spencer, Badge #17.
4:00 PM to 5:45 PM

Haight & Masonic and South Side of Park.

District #10.

H. Cohn, Badge #9.
4:00 PM to 6:00 PM

8th Ave. & Fulton Street on #5, 21, & 31 lines, during
school time take care of Lowell High School for
break in afternoon.

District #11.

M. P. Boragno, Badge #21.
4:00 PM to 6:00 PM

Broadway & Kearny Streets, all coaches and street
cars.

District #12.

H. Shurgin, Badge #200.
4:00 PM to 5:30 PM
5:30 PM to 6:00 PM

Placing #31 cars into Market Street.
All of Market from 4th to Gough Streets.

[fol. 595]

District #13.

M. Lewkowicz, Badge #19.
4:30 PM to 5:30 PM

Placing Sutter Cars into Market Street.

District #14.

J. E. Graham, Badge #30.
4:00 PM to 6:00 PM

Sutter & Fillmore Streets on #1, 2, 3, 4 & 22 lines.

District #15.

H. A. Donovan, Badge #26.
4:30 PM to 5:35 PM
5:35 PM to 6:00 PM

(Act. Inspector, Serving Probation).
Placing Haight Street Cars into Market Street.
South Side of Park on the #6, 7, 17, 20 & 23 lines.

District #16.

H. J. Reedy, Badge #28.
4:30 PM to 5:40 PM
5:40 PM to 6:00 PM

(Assistant Chief Inspector).
On #41 line at Second and Market Streets.
Ferry and East Bay Terminal and in charge of all
Districts.

District #17.

I. D. Hester, Badge #23.
4:00 PM to 6:00 PM

20th & Third Streets (Union Iron Works).

District #18.

H. Behlendorf, Badge #14.

4:10 PM to 5:30 PM

5:45 PM to 6:00 PM

16th & Bryant Streets on #22, 25, 27 & 36 lines.

8th Avenue & Fulton Streets on #5, 21 & 31 lines.

District #19.

L. Logasa, Badge #15.

4:00 PM to 5:45 PM

Third Streets & Wilde Avenue, coaches & #25 street cars.

District #20.

T. Larsen, Badge #24.

4:00 PM to 6:00 PM

S. P. Depot on #20, 41 & 42 lines, watch Third Street coaches when possible, pay strict attention to #41 line between 4:25 and 5:35 PM.

District #22.

W. J. Harrison, Badge #18.

4:00 PM to 4:10 PM

4:10 PM to 5:15 PM

5:20 PM to 6:00 PM

Third & Mariposa on #20 line (Union Iron Works).

First & Mission Streets, space Mission Cars and watch East Bay Terminal Cars.

Third & Mariposa Streets on #20 line (Iron Works).

District #23.

C. J. Dussourt, Badge #13.

4:00 PM to 5:40 PM

5:40 PM to 6:00 PM

Broadway & Fillmore Streets, on #22 & 24 lines.

8th Avenue & Fulton Streets, on #5 & 21 lines.

[fol. 596]

District #24.

C. Evans, Badge #27. (Act. Inspector, Serving Probation).

4:00 PM to 5:15 PM

5:30 PM to 6:00 PM

16th & Mission Streets on all Mission Lines, also #33, 36 & 22 lines.

18th & Third Streets on #22 line (Union Iron Works).

District #25.

J. Salvato, Badge #36.

4:30 PM to 6:00 PM

Sutter & Kearny Streets, taking care of all Sutter Lines and spacing Third Street coaches as much as practical.

District #26.

F. A. Fox, Badge #8.

4:00 PM to 5:30 PM

At Beach Terminal on #5 & #7 lines, keeping headways filled.

District #27.

H. Brown, Badge #16.

4:00 PM to 6:00 PM

At Daly City Terminal placing #14 lines on their headways, taking care of one man cars on San Mateo Line, also changing fenders on one man cars.

District #28.

J. P. Haslam, Badge #25.

4:00 PM to 6:00 PM

Starter, (Permanent Transfer to Inspectors List) as of September 15th, 1943.)

Sutter and Sansome Streets, spacing outbound Sutter Line Cars.

9/6/43

HKH

[fol. 597] CASE 4680—NEWTON EXHIBIT No. 31

Filed 9-15-43

Market Street Railway Company

Service to Shipyards and War Industries

Statement showing the Part the Market Street Railway Company is Playing in the War Effort

Since December 7, 1941 (Pearl Harbor) the Market Street Railway Company has had as its policy of operation that service to Shipyards and War Industries is the primary consideration and that consistent with that policy satisfactory and adequate service would be rendered on all of its lines. Herewith is given statement of service rendered by the company to the principal war establishments.

(1) Street car service to the Ferry Building to provide transportation to employes in Yards #1, #2, #3 at Richmond, California. Street car schedules connect with Ferry boats leaving San Francisco from 5:30 A. M. to 11:00 P. M., and arriving in San Francisco from 8:55 A. M. to 1:50 A. M.

(2) Motor coach service is operated from Broadway and Kearny Street to Hunters Point via Kearny, Third and Evans Avenue. Those coaches arriving at Hunters Point [fol. 598] from 6:00 A. M. to 8:00 A. M. are operated non-stop or express from Mission Street to Army Street. Twenty coaches are presently in this service.

(3) Cross-town coach service has been established from Silver Avenue and Mission Street to Hunters Point via Silver Avenue, Palou Street and Access Road. Also from 26th and Castro Streets to Hunters Point via 26th, Guerrero, Army, Third, and Evans Avenue. Full service is rendered on these lines from 5:25 A. M. to 12:42 A. M.

(4) Street car service was extended on the Third Street line from the Southern Pacific Depot at Third and Townsend Street to Mariposa Street to provide transportation to employes of the Bethlehem Steel Company (Union Iron Works).

(5) A cross-town motor coach line was established from 26th and Castro Streets to the Bethlehem Steel Company (Union Iron Works) from 26th and Castro via 26th, Guerrero, Army, Third Street.

Chairman. Something that has got to be solved and the only way it is going to be solved is if we all work together.

Commissioner Baker: Well, apparently, then, you may be excused, Mayor. I wish to say, on behalf of the Commission we are pleased to have you over here this morning, whether in the capacity of a witness or otherwise, and fully extend to you the courtesy of our facilities here; if you desire to remain for some of the session, why, we will be pleased to have you do so.

The Witness: Be very happy to stay. I am very much [fol. 686] interested in this problem.

Mr. Holm: Thank you. Mr. Mayor.

If the Commission please there is one other witness that I have, Mr. Cassidy, if you don't mind I would like to likewise call him out of order, then they may go on their way.

Mr. Cahill, would you please take the stand.

EDWARD G. CAHILL, a witness called on behalf of the City and County of San Francisco, being first duly sworn, testified as follows:

Direct examination.

Mr. Holm:

Q. What is your occupation, Mr. Cahill?

A. I am manager of the Public Utilities of San Francisco.

Q. How long have you occupied that position?

A. 12 years.

Q. Prior to that time what was your business or professional experience?

A. Contractor.

Q. And for how many years did you pursue that business?

A. 20 years.

Q. And where did your business take you, or was it just confined to local work?

Mr. Appel: Mr. Cahill's qualifications are admitted as far as I am concerned.

Mr. Holm: That is all right. I think he is well known to all of us, we need not go further.

Q. Mr. Cahill, have you any suggestions to make to the Commission as to how the present traffic situation may be [fol. 687] alleviated, bearing in mind that the Market Street Railway is owned privately and the Municipal Railway owned by the City and County?

A. Well, I agree with Mayor Rossi that there is only one proper solution of this thing, and that is consolidation of the two roads under one management and it should be done on a self-liquidating basis and it can be done that way. The actual figures which the Mayor gave you if the two roads had been consolidated on July 1st, 1942; during the year from July 1st, 1942 to June 30th, 1943, the actual income on the 7-cent basis net, after all expenses have been paid on the new wage scale, the higher wage scale which has been in effect during the past year, would have been \$4,879,466. That is the actual situation which would have been obtained. And as we were to have bought the Market Street Railway at something less than \$8,000,000 it is evident that we could have paid for the thing in 2 years because the short time would have cut down the interest payments materially, and it is still possible to do that, in my opinion.

However, the Board of Supervisors has blocked that so far and may continue to do that—to do so, I do not know.

Q. Now, Mr. Cahill, that is quite true and the situation is that for the present, at least, there can be no consolidation or one ownership. And in view of that condition what suggestions could you make to the Commission and its staff that would remedy the traffic situation in San Francisco today?

[fol. 688] A. Well, assuming that there could be no consolidation—and I am not willing to concede that—but under that assumption the Office of Defense Transportation, through Mr. Robert O. Crowe asked the Public Utilities Commission a series of questions and asked for a statement of policy, and among the questions that they asked were several which had to do merely with price and others had to do with service.

Q. What do you mean by "merely with price", Mr. Cahill?

A. Well, Mr. Crowe asked whether the Public Utilities Commission would agree to a uniform fare and to uniform to a universal transfer. Those are matters merely of price, they do not affect service. The service is available whether you pay 5 cents, 6 cents, 7 cents or whether you

pay two fares to reach different parts of San Francisco or not. It is a matter of price, and in answer to that set of questions I wrote, on May 3rd, to Mr. Robert O. Crowe, Regional Director, Office of Defense Transportation:

"Dear Mr. Crowe:

"On Wednesday, April 28th, 1943, you asked me whether or not the Public Utilities Commission would agree to a uniform fare for all mass transportation companies in San Francisco.

"I am authorized by the Public Utilities Commission to make answer as follows:

"The Public Utilities Commission strongly advocates a uniform fare of five cents for all mass transportation companies in San Francisco under present traffic and business conditions, and adoption of the principle of the universal transfer by joint agreement among the companies:

"Very truly yours, —"

Q. Was there any particular action taken by the Office of Defense Transportation relative to that?

A. Relative to that they merely acknowledged receipt of the letter.

Q. I see. Now, your other division of this problem.

A. The other division had to do with service. They asked for suggestions from the Public Utilities Commission as to what could be done under the existing circumstances, that is to say no consolidation, to improve the service that there is being given in San Francisco, and under date of May 11th I wrote to Mr. Crowe as follows:

"DEAR SIR:

"In order further to clarify the position of the Public Utilities Commission of San Francisco in connection with betterment of transportation service in San Francisco, may I state the following:

"The Public Utilities Commission proposes to lease from the Market Street Railway Company the right to operate cars now traversing the 'K' and 'L' lines of the Municipal Railway on the inner tracks on Market [fol. 690] Street, from Fremont Street to Twin Peaks Tunnel, a distance of over three miles.

"Please be advised that under an existing contract the Market Street Railway leases to the Municipal Railway of San Francisco the right to operate the 'K' line cars over Market Street Railway tracks on Ocean Avenue for a distance of more than one and one-half miles. Similarly, the Municipal Railway of San Francisco leases to the Market Street Railway Company the right to operate its cars over the Municipal Railway's tracks to the Bay Bridge Terminal and thence via Fremont Street back to Market Street.

"Under an existing contract between the Market Street Railway and the Public Utilities Commission of San Francisco, as soon as the war is over the Municipal Railway will rebuild the inner tracks on Market Street from Valencia Street to Twin Peaks Tunnel, and will remove completely the outer tracks on Market Street from Valencia Street to Twin Peaks Tunnel. The contract specifies that all of the Market Street Railway cars which operate on Market Street and all of the Municipal Railway cars which operate on Market Street shall have the right to operate on a single pair of tracks on Market Street from Valencia Street to Twin Peaks Tunnel.

"I call to your attention the fact that there is ample precedent for the suggested arrangement whereby the [fol. 691] Public Utilities Commission of San Francisco leases operating rights on the inner tracks of the Market Street Railway Company on Market Street. Not only is the contract directly in line with those in existence on Ocean Avenue and the Bay Bridge Loop, but is in line with the situation established by the contract for operation of Municipal Railway and Market Street Railway cars on the center tracks on Market Street itself from Valencia Street to the Twin Peaks Tunnel.

"Suggestion has been made by the Market Street Railway Company that cars of their No. 31 and No. 5 lines be permitted to operate on the outer tracks on Market Street in return for the privilege of allowing the Municipal Railway to operate its 'K' and 'L' lines on the inside tracks on Market Street. Operation of the 'K' and 'L' lines on the inner tracks of Market Street would produce at the traffic bottleneck at San-

some and Market Streets an almost equal amount of traffic on the inner tracks and the outer tracks. Any addition to traffic on the outer tracks made by transferring such inner lines as No. 31 and No. 5 to outer tracks, however, would nullify the beneficial results gained by placing the 'K' and 'L' cars on the inner tracks and would upset the equalization of traffic on the two sets of tracks.

"The Public Utilities Commission of San Francisco also desires to lease on a rental basis as many of the [fol. 692] Market Street Railway cars as that Railway can spare, these cars to be used anywhere on the Municipal Railway that the Public Utilities Commission thinks fit.

"At the present time the Market Street Railway and the Municipal Railway exchange transfers at the following five points:

"1. St. Francis Circle, between the Municipal Railway's 'K' line and Market Street Railway's No. 12 car.

"2. At Stockton and Market Streets, between the Municipal Railway's 'F' line and the Market Street Railway's No. 5 and No. 20 cars.

"3. At Steiner or Fillmore Streets and Union Street, between the Municipal Railway's 'E' line and Market Street Railway Company's No. 24 Castro-Divisadero bus.

"4. At Fillmore and Geary Streets, between the Municipal Railway's 'B' and 'C' lines and the Market Street Railway's No. 22 car.

"5. At Divisadero and Geary Streets, between the Municipal Railway's 'B' and 'C' lines and the Market Street Railway's No. 24 Castro-Divisadero bus.

"Notwithstanding the differential in fare, these transfers are exchanged on an even basis and no accounting is made by either Railway to the other and no money changes hands on account of transfer business. The Public Utilities Commission proposes to extend this system to all points where the two lines intersect.

[fol. 693] "It is the conviction of Public Utilities Commission that even should the leasing of idle cars and unused track operating space be exploited to their limits, there would still be a shortage of service and of equipment.

"For this reason the Public Utilities Commission earnestly urges that priorities be given it for purchase of 50 additional motor coaches and trolley coaches to be so strategically placed as to improve transportation facilities vital to the war effort. Funds for immediate purchase of this equipment are available.

"Very truly yours: —".

Q. Mr. Cahill, up to the time that Mayor Rossi and you have testified in this proceeding the Railroad Commission, officially, has had nothing in the way of actual notice of activities on the part of the City to aid in solving this transportation problem, so we are going to ask you to give as much detail to us as you can in addition to the very clear outline made in your letter.

Now, following that letter did you have any meeting with members of the Market Street Railway staff and the Office of —ODT?

A. Meetings were held in the office of ODT, Mr. Crowe's office, and the Market Street Railway people were there and I was also. It was a joint meeting between the Market Street Railway, the Office of Defense Transportation and the Municipal Railway and the California Street Cable [fol. 694] Railway Company. We had several such meetings.

Q. What was the result of such meetings?

A. There has been no result. The ODT merely acknowledged receipt of this letter, they have not taken any action on it as far as—they have taken no action on it.

Q. Now, in your opinion, if your plan, as outlined in the letter that you have just read, were adopted would it actually aid in the handling of transportation, particularly along Market Street?

A. Yes, there is no question in my mind that it would aid transportation on Market Street. It would utilize the two tracks fully. The inner tracks now are not being fully utilized. It would provide a certain number of additional vehicles which are now in the carbarns of the Market Street

Railway, which would be taken out and put on the street and put into service and if Mr. Crowe would come through with priorities for some new buses and some new trolley coaches it would help greatly.

I want to call to your attention that there is none of that kind of equipment idle in the City and County of San Francisco, neither in the hands of the Market Street Railway nor in the hands of the Municipal Railway; every single trolley coach and every single gasoline motor bus is in operation that is not in the shop for reasons of maintenance. We are short of that equipment, the Market Street Railway Company, I am sure, are short of that type of equipment also. We have been refused priorities time [fol. 695] after time by the Office of Defense Transportation on the basis and because they say that we are not utilizing here in San Francisco all the rolling stock which exists; that is true as to street cars only.

There are a certain number of street cars, I believe, in the Market Street Railway Company's barns which are operable and which are not being operated, but that has nothing to do with transportation over streets which have no rails; there are many such.

I call to your attention, for example, a situation which exists in the Sunset District. Noriega Street is approximately 4000 feet from the nearest street car line. It runs east and west, bisects the Sunset District. It should have a direct motor coach line from the beach along Noriega and thence via Lincoln Way and through the Park, down Golden Gate Avenue to approximately 4th and Market Streets; a direct primary line is desperately needed. That can not be operated by the Municipal Railway getting some street cars from the Market Street Railway as there are no rails and you can not get rails under the priority conditions at present.

There are a number of ~~less clear~~, but equally important situations in the City which require more buses, more trolley coaches in order to properly give transportation to this City; the Municipal Railway has the money to buy them, we are willing and eager to buy them, we are anxious to [fol. 696] give the service, we are not allowed to do it by the parties that control the priority system of the United States Government and their excuse is that we are not using all of the available transportation vehicles in San

Francisco. As I say the use of Railway cars which have to run on rails does not solve that kind of situation. That is a crying need.

Q. Well, now, coming back to this letter that you have just read, there is one portion of it there that strikes me as possibly being interpreted as being a bit selfish on your part, that is, where you have declined to allow the Market Street Railway to use the outer tracks below Sansome Street. Now, would you explain a little bit more in detail to the Commission just what the physical condition is from that point down to the Ferry Building?

A. At the present time the outer tracks at the bottleneck on Market Street, which is approximately at Sansome and Market, the outer tracks have traffic to the extent of approximately 1900 cars per 24 hours; the inner tracks at that same spot has traffic to the extent of about 1100 cars per 24 hours. Now, it is perfectly obvious that the outer tracks are over crowded to the point where the traffic at peak load hours slows down to a standstill; cars literally run end to end at those hours. The inner tracks, on the other hand, are relatively free of traffic, even at the bottleneck at peak load hours because they only have 1100 car [fol. 697] trips per day as contrasted with 1900 car trips per day.

If I could take my "K" and "L" cars off the outer track and put them on the inside track that would result in a situation in which each track would accommodate approximately 1500 cars per 24 hour day, thus equalizing the traffic, getting a full use of both tracks, materially speed up the outer track traffic without decreasing the speed to any great extent on the inner tracks.

Q. Well, for an immediate solving of this problem, an order of this Commission, then, directing the Market Street Railway Company to enter into a fair contract with the City for the use of the inner rails by the "K" and "L" lines would be a great help, wouldn't it, Mr. Cahill?

A. Well, Mr. Holm, I do not know anything about the powers of the Railroad Commission of the State of California in such a situation, but if they have the powers such an order would materially help, of course.

Q. Now, turning to another subject, for a moment, Mr. Cahill, you have mentioned that the Public Utilities Commission—and, by the way, they are the actual governing

body for the conduct of the Municipal Railway and the other utilities owned by the City—advocating a universal transfer. Have you given any consideration as to what effect that an exchange of transfers, universally, will have on the revenues of the Municipal Railway?

A. I think that the two railroads would each make a loss [fol. 698] in the aggregate sum of a quarter of a million dollars per year.

Q. Would you explain that a little bit more in detail? That came rather hastily.

A. Well, as it is now, when people live, for example, on the Geary Street car, take a Geary Street car out in the Richmond district now to go to Third and Townsend, they go down to Kearny Street, pay a second fare to board Market Street Company equipment and go down Third Street to the Railroad depot. That costs them two fares; if we had a universal transfer, of course, it would only cost them one fare, they would take a transfer and they would not pay the second fare. I believe there would be enough such double fares eliminated that, in the course of a year the two roads would lose revenue of about a quarter of a million dollars; not each, but together.

Q. Well, about how would that be apportioned, do you suppose?

A. That is a hard question.

Q. As between your Company and the—

A. Possibly 50-50.

Q. You have made some rough estimates of that, have you, in your own mind, or on paper?

A. Yes, I had to come to a definite conclusion on the matter when we presented the lease-purchase plan for the self-liquidating acquisition of the Market Street Railway to the Board of Supervisors, and the best information I could put together led me to the statement that it would be \$225,000 per annum.

Q. Yes, to be borne 50 per cent by Market Street Railway?

[fol. 699] A. I did not say. I said it was going to be a consolidated operation, I merely said the operation would save to the extent of \$225,000. The exact division of that I do not think is of any particular moment, but I think it would be about 50-50.

Q. I see.

I think that is all I care to ask Mr. Cahill.

Mr. Appel: I would like to reserve the right to cross-examine Mr. Cahill in case something occurs in the future.

Commissioner Baker: But nothing at this time?

Mr. Appel: Nothing at this time.

Mr. Cassidy: I have no questions.

Commissioner Sachse: I would like to ask Mr. Cahill a few questions.

Commissioner Baker: We will take a brief recess at this time. (Recess.)

The Commission will please be in order.

Commissioner Sachse: Mr. Cahill, when you stated that under the 7-cent fare under a unified operation in this period that you mentioned approximately \$4,000,000 plus would have been accumulated over and above cost of operation, all costs of operation, including depreciation, I assume, the intention, of course, would have been to use this \$4,879,406 towards purchase of the Market Street Railway?

A. That is right.

Q. In other words, the 7-cent fare would not have been [fol. 700] necessary during this period if it had been merely a question of meeting all necessary costs of operation?

A. That is right.

Q. Now, I notice that in the letter to Mr. Crowe that you read, the first one from the Board of Public Utilities, the recommendation was that a 5-cent fare should be adopted in San Francisco for all three transportation systems, the Municipal, the Market Street Railway and the California Street Railway, if I understood that correctly. Would you say—did you make any studies to determine whether a 5-cent fare would meet all necessary costs of operation at the present time and in the immediate future assuming that money is not to be accumulated for the purchase of the Market Street Railway System?

A. The 5-cent fare produces a net income, after payment of everything on the Municipal Railway, of over a million dollars each year. Now, then, that being the case, I see no reason why, as far as my—I have not studied the financial set-up of the other Railways with a view to ascertaining at what fare they could operate profitably because that is distinctly outside of my province and it would be a waste of

time as I have nothing to do about it—but as far as the Municipal Railway is concerned I have studied very carefully the effects of a 5-cent fare, 6-cent fare, 7-cent fare, and there is no necessity to charge the people of San Francisco more than 5 cents on the Municipal Railway for the service we give. If we were to raise to a 6-cent fare or [fol. 701] if we were to raise to a 7-cent fare we could not possibly, under present conditions, give any more service than we are now giving on the 5-cent fare. Every single one of our street cars and every single one of our gasoline motor coaches and every single one of our electric trolley coaches are in operation every day with the exception of Sundays and holidays.

Q. One more question—

A. Therefore, I can give no more service than I give now and as I am making a million dollars a year net on the 5-cent fare I can not see any reason why I could be warranted in recommending a 6-cent fare which might make a lot more money, might not, but which I could not justify by additions in service. That is the only reason which I can think of, when we are already making a vast profit, to raise the fare.

Q. You spoke of the attitude, as you understand it, of the ODT, and of the Federal authorities that have to do with priorities, that they will not grant the City priorities because of the fact that there is certain rail equipment idle and not used?

A. That is right.

Q. Now, is any of the Municipal Railway equipment in that class, that is considered idle and not used?

A. No, sir, not a single one.

Q. So it is all Market Street equipment that they have in mind when they say that there is unused equipment in San Francisco?

A. That must be the case,

[fol. 702] Q. Now, if that is the attitude of the Federal authorities—we will assume it is, I do not know of my own knowledge—what could be done, in your opinion, to eliminate that objection? In other words, what could be done to put the rail equipment to use, the Market Street Railway equipment, either by the Market Street itself or jointly by the Market Street and Municipal through some lease arrangement?

A. I have already answered that, Mr. Commissioner, in my second letter to Mr. Crowe which I read to you a little while ago. We offered to lease such cars as the Market Street Railway Company can spare provided that we get track space upon which to operate them, namely, the use of certain—the use of the inner track on Market Street.

Q. Maybe I did not make my question clear. Really what I meant to ask you was, Mr. Cahill, what do you think this Commission could do to put this idle equipment, this unused equipment, assuming that it can be necessarily and properly used, into operation?

A. Well, Mr. Sachse, I do not know what are the powers of the Railroad Commission of California; it never has entered into—it never has been necessary for me to study that because they do not have anything to do with the Municipal operations.

Q. I was not thinking of the legal aspect.

A. You asked what can the Commission do about it, I do not know.

Q. In other words, is it your opinion that if the man-[fol. 703] power could be secured and if these cars, to the extent that they need any rehabilitation, could be put in serviceable condition, all of those cars could be put to use under the present traffic needs in the City of San Francisco on rail lines?

A. The number of cars which are usable now, I believe, could be—and not used—I believe to be around 30.

Q. They could all be used?

A. I believe there are 30 which are operable and not being used, approximately that number. The manpower situation is the most serious thing we have to deal with in the Municipal Railway and I have no doubt the same is true in the other railways, but it is getting better. A short time ago we had a shortage of 250 men out of our 1100 man crew; the shortage is now down to 110. We are succeeding in getting a considerable number of women; they are turning out to be very good operators. It has taken a very heavy advertising campaign to do it, but we have succeeded. I believe we could operate 30 more cars. It would take overtime payments to the personnel, but it could be done.

Q. You spoke of a universal transfer, that is a transfer between the Municipal and the Market Street, leaving out the very minor transfer situation with the California Street

Cable Railway for the moment, and I understood you to say that if a transfer between the two lines were put into operation it would cost about \$225,000 a year to the two lines [fol. 704] combined. Now, are you of the opinion, Mr. Cahill, that from the standpoint of the public now as distinguished from a revenue standpoint; the universal, as nearly universal as you can get it, transfer would be a good thing?

A. Yes, I am.

Q. Have you ever given any thought to the possibility of charging something for such a transfer?

A. Yes, and I do not believe I am warranted in making such a recommendation to the Public Utilities Commission because we carry a sufficient number of transfer passengers on the Municipal Railway under present conditions that our net revenue per passenger carried is not 5 cents, it is less than 4 cents, it is 3.9 cents per passenger carried. I am not justified in making any payments which would reduce that any further.

Q. That is from a revenue standpoint, but would you think that the people of San Francisco would be better served if they could have a transfer between these two main lines?

A. Yes, I should think so.

Q. Even if they had to pay, let us say, one cent, whatever it might be?

A. No, it does not equal a cent. The transfers run into many, many millions per year and the total loss would only be a quarter of a million dollars to the people.

Q. It would not be worth a cent in your opinion?

A. It would not be. You could not very well charge them a fraction of a cent, of course.

[fol. 705] Commissioner Sachse: I think these are all the questions I have, Mr. Cahill.

Commissioner Craemer: Mr. Cahill, if you had a universal transfer how much more capacity would the Market Street have to carry them?

A. What did you say, sir?

Q. If you had a universal transfer at the present time how much capacity has Market available to carry that traffic—I mean the Municipal?

A. We haven't got any more capacity than we have on the streets today, sir. Have to crowd them in a little tighter.

Q. That is the answer?

A. We can not get any more equipment of any kind; we are estopped from that by the Office of Defense Transportation which, incidentally, have given, I believe, new transportation units to the City of Los Angeles, to the City of Portland, City of Seattle; we have been refused time after time, the Municipal Railway, by the Office of Defense Transportation on the basis that San Francisco was not using all of the available equipment in San Francisco at the present time and, therefore, they would not give us any priorities for any further units.

Q. Your answer, however, is that under present conditions the Municipal, if you had a universal transfer, could only carry the added traffic by—

A. Crowding them in more because we haven't more equipment. It is all being used at the present time every day.

Commissioner Sachse: Would you say, Mr. Cahill, that a [fol. 706] transfer, either at a charge or without a charge would, at this time, materially increase the volume of traffic, the combined volume of traffic?

A. No, I do not think it would because I think that under the present financial conditions of the people they have money enough, when they want to go somewhere, to pay the two fares and they do it. They do not refuse to go to 3rd and Townsend from out in the Richmond District because it costs 7 cents on the Market Street and 5 cents on the Municipal. They pay it and go. The traffic, I do not believe, would increase very much.

Q. So, a transfer would not throw a very large additional burden on the through railroad facilities?

A. That is my opinion.

Q. When it comes to what you might call the margin of availability on—of the facilities on the two lines which road would you say is operating nearest to capacity as far as its capacity of cars is concerned?

A. Well, we are operating, in the Municipal Railway, beyond the capacity of the cars. That is the reason we need new equipment.

Q. But that is not the case as far as the capacity of the tracks used by the two relative carriers is concerned. Do you think the Market Street has certain—

A. They have a surplus available of track space on Market Street which we would like to get the use of.

Commissioner Sachse: That is all.

Commissioner Baker: Apparently that is all, Mr. Cahill. [fol. 707] Mr. Holm: Just a minute, Mr. Baker.

If the Commission please we were asked to produce any offers that the Market Street Railway had made to the City and County of San Francisco for the sale of their operative properties. I wish at this time—I presume it is of sufficient importance that I should read it into the record, then have Mr. Cahill identify it—the following excerpt from the Directors' meeting of the Market Street Railway of September 24, 1942:

“Sale of the operative properties of Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he has agreed with the Mayor and other City Officials, as well as the Board of Supervisors, to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash, and that a charter amendment for the purpose of raising such sum by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at the next general election on November 3, 1942. The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company.

“Whereupon, on motion of Director Scott, duly [fol. 708] seconded by Director Lienthal, the following resolution was adopted:

“Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash be, and the same hereby are, ratified, approved and confirmed; and it is

“Further Resolved, that the Officers of the Market Street Railway Company be and they are hereby au-

thorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

Q. Mr. Cahill, do you recall having seen such a document as I have read?

A. Yes, I have seen a document of that type.

Mr. Holm: I asked if the Commission please that this be—this copy of the minutes be accepted in evidence.

Commissioner Baker: The document referred to by counsel, consisting of two sheets, will be received in evidence and marked Exhibit next in order, No. 8.

Mr. Holm: We were further asked by the Commission representatives to supply any additional offer that had been made by the Market Street Railway Company, since 1942. [fol. 709] I read the following excerpt from the minutes of the Board of Directors dated March 25, 1943:

"Sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he had agreed with the Mayor and other City Officials, as well as the Board of Supervisors, to sell the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20th, 1943. The President also stated that the price mentioned is the amount that has been agreed upon for the purchase by the City and County of San Francisco

of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

"Whereupon, on motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted.

"Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further Resolved, that the Officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

Q. Mr. Cahill, have you seen a document similar to that which I have just read?

A. Yes, sir.

Mr. Holm: I ask, if your Honor please, that this document entitled, "Market Street Railway Company excerpt from Board of Directors' Meeting of March 25, 1943" be accepted in evidence.

Commissioner Baker: It will be received and marked Exhibit No. 9.

[fol. 711] Mr. Holm: We have nothing further to offer unless you wanted to volunteer something, Mr. Cahill?

A. Nothing further.

Mr. Cassidy: Mr. Mors, will you resume, please.

CHARLES W. MORS, recalled.

Direct examination resumed:

Mr. Cassidy: Mr. Mors, when you were last on the stand you were discussing that section of your report dealing with

operating expenses and you had just finished explaining Chart 4-2 immediately following page 21 of your report. I will now ask you to refer to Table 4-2, which is the second page after the chart, and explain that table please.

A. This table deals with group 1 operating expenses, which covers the maintenance of way and structures. The upper part of the sheet is a tabulation showing the trend of this expense over the years 1922 to 1942, and subsequent columns show the cost per car mile, per car hour and per mile of track and also the expense as a percentage of the Company's total operating expenses.

At the bottom of the sheet are three graphs which show the trend of these unit costs for Market Street Railway by the heavy line and the trends of the corresponding unit costs in the San Francisco Municipal Railway and the Los Angeles Railway Corporation by the lighter lines. This table is typical of a number of tables appearing throughout this section showing similar information for the various operating expense accounts and groups.

Q. Will you state what the experience of the Company has been regarding maintenance of equipment?

A. Table 4-9, the second sheet following page 24, shows the cost of maintaining the equipment used in furnished rail transportation. The cost per car mile and per car hour has been approximately the same and relatively constant for the Market Street and Municipal Railways for a number of years. Los Angeles Railway's unit costs have been much higher in most years.

Tables 4-11 and 4-12, following page 25, show that Market Street Railway has spent relatively more for maintaining the electrical equipment of cars and less for maintaining the cars themselves than have the other two systems.

Q. The next section of your report begins on page 35. Will you state what is shown in that section?

A. This section deals with taxes. The tabulation on page 35 shows the trend of taxes for 21 years, while Table 4-1, following page 35, shows the detail of charges for the past 5 years.

The Company has not, as yet, felt the impact of recent tax increases since it has not paid any income tax for a number of years. I might add here that the Company had not, at the time I was studying the taxes, filed its income tax return for the year 1942, having obtained two 60-day

extensions, but I understand that it has been filed or will [fol. 713] be filed today; there is a copy of it here in case the question should come up.

Q. Will you turn, Mr. Mors, to the next section of your report, beginning, at page 38, and explain that section?

A. This section shows the road and equipment as recorded on the Company's books. Table 6-1, following page 38, shows the trend of the road and equipment account from April 1, 1921, the date of the reorganization, to the end of 1942. It shows additions and betterments by groups and retirements and other credits in total, and the balance of the account at the end of each year.

The Company set up on its books \$46,851,000 as of April 1, 1921; at the end of 1942 the balance was \$41,769,000, approximately.

For purposes of comparison the historical cost appraisal prepared by the Commission's engineering department as of June 30, 1920, in connection with the reorganization of the United Railroads of San Francisco, has been brought forward by adding the net additions and betterments as reported by the Company and that yields historical cost of road and equipment as of December 31, 1942, of \$25,344,000 as compared with \$41,769,000 on the Company's books.

Commissioner Sachse: Right at that point, before you leave that, Mr. Mors, have you any brief explanation for two things that occurred to me. First, why is it that, as shown on your table 6-1, following page 38, the totals for [fol. 714] road and equipment decreased—have decreased from the highest figure, which I take it was in 1926, \$47,994,910.03, decreased since that time down to \$41,768,505 in 1942? What are the principal reasons for this large decline on this system?

A. There are several contributing factors. Several lines have been abandoned over those years and much equipment has been retired without being replaced, due to the curtailed operations of the Company.

Q. Then am I correct in concluding that the amount of \$25,343,543, which is shown as the historical cost on page 39, brought forward to 1942, corresponds to the book cost now of \$41,768?

A. That is right.

Q. Am I also correct in assuming that the—or in concluding that the purchase price for which this system was

offered in the exhibits No. 8 and No. 9 correspond to those figures, or was there any substantial amount of property excluded from the amount covered in that offer?

A. I am not familiar with that, I do not know the answer.

Commissioner Baker: The hour of noon has arrived. We will take a recess at this time, gentlemen, until this afternoon at 2 o'clock, if satisfactory to counsel?

Very well, recess until 2 o'clock this afternoon.

(Whereupon, at the hour of 12 M. a recess was taken until 2 o'clock P. M.)

[fol. 715] Afternoon Session: 2:05 O'Clock P. M.

Commissioner Baker: The Commission will please be in order. You may proceed, Mr. Cassidy.

Mr. Cassidy: Mr. Mors.

CHARLES W. MORS, recalled.

* Direct examination resumed:

Mr. Cassidy: Mr. Mors, before the noon recess you were discussing that section of your report which deals with road and equipment. Have you any further comment to make in connection with that section?

A. I believe the question was asked whether this included non-operative property. The starting point, the historical cost appraisal—

Mr. Hunter: I think Mr. Sachse asked the question, he would be most interested in the answer.

Commissioner Sachse: Will you excuse me just one moment?

(At this point Commissioner Sachse left the court room briefly and upon his return the following proceedings were had:)

Mr. Cassidy: Will you proceed, Mr. Mors?

A. Mr. Sachse raised a question regarding Table 6-3, which immediately preceded page 40. The historical cost as of June 30, 1920, was all operative property and to that has been added net additions and betterments as taken from the Company's annual report. Now, to the extent that

property has become non operative since 1920 it would be included in here, but the starting point was all operative property.

[fol 716] Mr. Cassidy: Now, will you turn to the next section of your report, which commences on page 40?

A. This section deals with depreciation. Table 7-1, following page 40, shows the credits and charges to the depreciation reserve over the period from April 1st, 1921, to the end of 1942. The balance in the reserve at the end of each year is shown in the last column. At the end of 1942 there was a reserve balance of \$1,023,887; that amounts to less than 3 per cent of the road and equipment as of the same date shown on the Company's books.

For a number of years the Company's annual appropriation for depreciation has been an even \$500,000 and this has been charged to profit and loss. The classification of accounts provides three accounts in the operating expense section for depreciation, but they have not been used, at least in recent years, and the appropriation has been made as a single sum appropriated in profit and loss. As a test of the reasonableness of the \$500,000 appropriation approximate straight line accrual rates arrived at from a consideration of the rates used in connection with the 1920 appraisal and the rates for corresponding accounts of Los Angeles Railway Corporation used in the Commission's 1939 study in connection with Case 4461, were applied to the historical cost as of December 31, 1942, as shown in Table 6-3, and this yields an annual accrual of approximately \$780,000 based upon the capital as of the end of 1942.

[fol. 717] I understand that the Company has changed its depreciation appropriation for the year 1943 and beginning with the May appropriation has increased it so that for the year they intend to set aside \$750,000.

Looking ahead to Table 8-1, which follows page 43, and chart 8-1, it may be seen that if an accrual corresponding to this approximate straight line accrual of \$780,000 had been charged to operating expenses and credited to the reserve there would have been no net operating income in any of the 5 years ending with 1941. If adequate provision is not made or can not be made for currently accruing depreciation the inevitable result is that some of the capital investment is consumed.

Chart 7-1 preceding page 41, shows in graphic form the net retirements charged to the depreciation reserve and the

dotted line shows the annual appropriations to the reserve over the period 1921 to 1942. In 1942 the depreciation reserve was charged with approximately 29 per cent of the net retirement charged for three car lines abandoned during the year; the remaining 71 per cent—approximately 71 per cent, or about \$883,000, being charged to profit and loss.

Q. Now, Mr. Mors, will you explain the last section of your report, beginning at page 43?

Commissioner Saches: Before you get to that may I just ask a question or two?

[fol. 718] Look at your Table 7-1, Mr. Mors, which immediately follows page 40. I notice that in the years 1921 to 1926, inclusive, although there were made appropriations in those years to the depreciation reserve there is no charges. In other words, all these columns to the right hand of the appropriation column are left blank. How were the charges treated in those years?

A. In the early years the Company did use the accounts set up for—in the operating expense group for depreciation to create a reserve for renewals separate and distinct from their reserve for depreciation, and renewals of property were handled through that reserve instead of the depreciation reserve and abandoned property was, in general, charged to profit and loss.

Q. But when you look at the last column on that table, the balance as of December 31 of each year—I haven't done any calculating here, but it would seem that the total accumulation of the reserve is used in order to get the balance as of December 31, 1942, is that right? In other words, you add the first years from 1921 to 1926 to accumulate the—

A. Without any charges?

Q. Without any charges—\$2,280,000.

A. That is right.

Q. Now, another thing that strikes me there, if you take the last 8 years, I think it is, where \$500,000 has been appropriated each year, and check against the retirements [fol. 719] charged to the reserve you find that the retirements charged to the reserve for the past 8 years were much larger than the appropriations to the reserve?

A. Yes, they exceeded the—

Q. They averaged about \$800,000 a year, by merely looking at these figures, somewhere between 750 and \$800,000 as against the \$500,000 that was appropriated, showing, on

the face of it, that the appropriation is not sufficient to meet the actual depreciation.

A. That is right. And whereas the rough calculation that we made of the straight line accrual shows the \$500,000 appropriation to be only in the neighborhood of two-thirds of an amount to be considered adequate, since the property has been diminished over a period of years, it follows reasonably that adequate accruals for earlier years would have been proportionately greater.

Commissioner Sachse: Excuse me, Mr. Cassidy.

Mr. Cassidy: Will you now explain the last section of your report?

A. Referring to chart 8-1, following page 43, this chart shows the trend of total operating revenue over the past 21 years and what the revenue was used for. The upper solid line shows the trend of total operating revenue. Starting from the bottom of the chart the area between the base and the lowest curve represents maintenance expense; the next one between the first and second curves represents the expense of operation; the next one taxes, then depreciation.

The area between the dotted curve and the total operating revenue curve represents net operating income; where the dotted curve is above the solid curve it indicates a net operating loss.

The last few years have been expanded to show the monthly trend of the year ended with the particular month. It shows a period of rapidly declining revenue during the years from 1929 through 1933, followed by a leveling off for several years, then a more gradual decline with several years of little or no net operating income. The years 1942 and the first part of 1943 show an up turn of both total operating revenue and net operating income. The net operating income for the 12 months ended April, 1943, was about a million and a quarter dollars.

The chart 8-2, following two pages later, shows the same information for the years 1937 to the present on a monthly basis. The various fare changes and other events which might have a possible effect upon operating revenue are indicated on the chart. The introduction of the two cent transfer charge did not have a pronounced effect upon operating revenue, but the change to a 7-cent fare with tokens

4 for a quarter in May of 1938 did result in an immediate decrease in total operating revenue.

The stimulating effect of the Golden Gate Exposition in 1939 is shown and also the present up-swing which started [fol. 721] in 1941, but became quite pronounced after we entered the war. It is interesting to note that the highest operating revenue month of recent years came in December, 1942, the first month after gasoline rationing became effective. For the past 6 or 8 months revenue, total operating revenue has oscillated about an average of a little greater than \$700,000 a month.

Mr. Cassidy: I offer the report described by the witness as the next exhibit in order.

Commissioner Baker: This report will be received in evidence and marked Exhibit No. 10.

Mr. Cassidy: That is all on direct of Mr. Mors.

Mr. Appel: I haven't any questions at this time, but I would like to reserve the right to cross-examine later on.

Commissioner Baker: Any questions?

Mr. Holm: No questions.

Commissioner Baker: Have the Commissioners any questions?

Apparently that is all, Mr. Mors, for the time being. You may be excused.

Mr. Cassidy: Mr. Hall.

WARD HALL, recalled.

Direct examination:

Mr. Cassidy: Mr. Hall, since the last hearing have further traffic checks been made by you or under your direction?

A. Yes, sir.

Q. And have you also obtained certain information concerning the manpower situation?

A. I have.

Q. Were these studies made under Mr. Hunter's general supervision?

A. They were.

Q. And have you prepared a pamphlet containing various tables and charts?

A. I have.

Q. Will you pass copies to the Commissioners, please?

A. The Commissioners have copies.

Q. Do these charts and tables show the results of your factual studies?

A. They do.

Q. Am I correct in understanding that the first 8 tables relate to the manpower situation?

A. Yes.

Q. Where did you obtain the information shown on these first 8 tables?

A. Well, I prepared these 8 tables as tables 1 to 8, inclusive, from information developed from the operating record of the Market Street Railway Company, the Municipal Railway of San Francisco and the Los Angeles Railway for the period May, 1942 to April, 1943.

Q. Now, will you briefly explain the first 8 tables?

A. Table No. 1 shows the number of cars and buses required by each of these companies to fulfill their schedules, the number of cars not sent out to fulfill these schedules due to lack of manpower, and the percentage of cars not sent out to the total.

Q. Have you some figures in addition to those shown on the table?

A. Since preparing Table No. 1 I have ascertained the [fol. 723] figures for May and June, 1943, from the Market Street Railway and the Municipal Railway of San Francisco.

Q. What were those?

A. In May on the Market Street Railway Company, cars and motor coaches held in during the month, 873 and for June 1263; number of scheduled cars and motor coaches during the month for May, 12,084 and for June, 12,296; percentage of motor coaches and cars held, not sent out, or rather the way the title reads, "Percentage of motor coaches and cars held in during the month" for May 7.2 and 10.3 for June.

With respect to the Municipal Railway, cars and motor coaches held in during the month for May, 4, for June 4; number of scheduled cars and motor coaches during the month for May, 7,092, for June 7,139, and the per cent for the municipal Railway for May is .1 per cent and for June .8 per cent. I have nothing for the Los Angeles Railway.

Q. Now, will you explain—

Commissioner Craemer: I think you are wrong on your percentage for June. It should be .08, shouldn't it?

Commissioner Sachse: That it right.

Commissioner Craemer: .08 per cent.

A. Yes, you are right, I believe.

Commissioner Craemer: Less than 1 per cent.

Mr. Cassidy: Which is the correct figure, Mr. Hall?

A. .08.

Q. Will you proceed to the next table, please?

[fol. 724] A. Table No. 2 shows an estimate of the number of street car and motor coach operators required to fulfill all schedules, that is, the number of men available, the number of men short and the per cent short.

Q. Do you have additional figures on this table, too?

A. For May and June for the Market Street Railway and the Municipal Railway.

Q. Will you give those figures, then?

A. For the Market Street Railway, estimated number of men required for May 1583; for June 1600. Available, May 1273 and June 1243. Shortage for May 310 and June 357. Shortage, per cent, May 20 per cent and June 22 per cent.

For the Municipal Railway estimated number of men required for May 1163, June 1159, available 1077 for May and for June 1090. Shortage for May 86 and for June 69. Shortage, per cent for May 7 and for June 6.

Q. Will you proceed to the next table, please?

A. Table No. 3 shows the turnover of platform labor, in other words, the number of employees hired and the number of employees who left the service, including those having gone into the armed services.

Q. If you have any additional figures on this table will you give them, please?

A. I have additional figures for May and June of this year.

For the Market Street Railway Company gain for May 60, June 63; loss for May, 86, June 91; net for May minus 86 and June minus 28.

[fol. 725] Commissioner Sachse: You don't mean 86; 26.

A. 26. This gives an accumulated total through June for a gain of 1184, loss 1197 and a net of minus 13.

For the Municipal Railway gain in May 75 and June 60; loss for May 62, June 47, net for May plus 13 and for June plus 13. Giving a total for the entire period from May,

'42 through June '43, of gain 915, a loss of 772 and a net of plus 143.

I haven't these figures for the Los Angeles Railway.

Mr. Cassidy: And table No. 4.

A. Table No. 4 shows a comparison, by months of the estimate of men required, with the number on sick leave and the percentage of total on sick leave.

Q. And will you add any figures you may have?

A. On the Market Street Railway, estimated number of men required, May 1583, June 1600. Daily average number of men on sick list, May, 97, June, 94; per cent on sick list for May, 6 per cent and June 6 per cent.

On the Municipal Railway estimated number of men required for May 1163, for June 1159; daily average number of men on sick leave, for May 76, for June 69; per cent for May 7 and June 6.

Q. Will you turn to the next table?

A. Table No. 5 shows a comparison of the manpower situation in the shop crafts. In other words, the estimated number of men required, the shortage and the per cent short.

[fol. 726] Q. And will you add any later figures?

A. I did not have an opportunity to get the May and June figures in the shop crafts.

Q. What does Table 6 show?

A. Table 6, like Table 3, shows the turnover in shop personnel, with the net loss or gain.

Q. Table 7?

A. Table 7 shows a comparison of the rates of pay of the three companies, that is, the Market Street Railway Company, the Municipal Railway and the Los Angeles Railway for platform men as of June, 1943.

Q. And table 8?

A. Table 8 is a like comparison of the three companies for mechanics in the shop.

Q. What do you show on tables 9 and 10?

A. On tables 9 and 10 I endeavored to show certain traffic characteristics on Market Street, and in table 9 we have shown the number of cars operating along Market Street operating in one direction on the outside tracks and on the inside tracks at the 3 particular points outbound on Market Street west of Sansome where it shows a total of 115 Municipal cars on the outside tracks between 4:30 and

5:30, a figure of 82 on the inside tracks operated by the Market Street. Also on Market Street east of Sansome that point was taken so as to include the Sutter Street cars.

Q. Was this summary taken from field checks?

A. The information, or rather this table was compiled from data that we have compiled in our field checks.

[fol. 727] Q. When were those checks made?

A. On May 24, 1943.

Q. What does table 10 show?

A. Table 10 is also compiled from our checks on May 24, 1943, to show the average speed per hour on both the Market Street Railway Company and the Municipal Railway, an hour peak during the morning peak and the evening peak.

Q. How did you calculate those results?

A. We calculated those results from the checks which we made on May 24th and figuring the distance that the cars traveled between the two check points.

Commissioner Sachse: What were those points on Market Street?

A. On Market Street was 6th and Market around to Market and Sansome.

Mr. Cassidy: Around the loop, you mean?

A. Yes.

Q. And you scaled the distance?

A. We scaled the distance, yes.

Q. Now, Mr. Hall, will you turn to your chart No. 1? Will you explain that briefly, please?

A. Chart No. 1 shows the load factor and frequency of service during one hour of the period on the No. 5, McAllister line, in both directions, that is, inbound and outbound; on the No. 1 and 2, Sutter lines, inbound and on the No. 14, Mission Street line, outbound. These were all on the Market Street Railway.

Q. I direct your attention to the chart in the upper left hand corner. Have you any particular comment to make on that?

A. That portion of the chart involves the No. 5 line, in-
[fol. 728] bound in the morning and shows the frequency of the service and the load factor of the cars as they passed a checking point.

From this chart it can be readily seen that there are breaks in the service; for instance, between 7:20 A. M. and 7:35 A. M. there is a gap between cars of 10 minutes; the car passing the checking point about 7:35 has a load factor of 2.7, whereas the preceding car had only a load factor of 1.4. The cars after 7:35 followed in rather close headway and with reduced load factors. I might say here that I used the term "load factor" instead of "seated load" on account of the difference in the seating capacity of various cars, so as to reduce all the figures to one base.

Commissioner Sachse: What is one?

A. One is a seated load.

The same condition exists between 7:55 and 8:05 A. M.

Mr. Cassidy: In the morning.

A. Now, in the evening, that is the chart in the lower left hand corner, the No. 5 line carries heavy loads even with fairly uniform headway because of the more concentrated peak. It will be noted that the car passing the point of observation immediately after 5 o'clock had a load factor of 3, and, with 4 exceptions, all the other trips had load factors of over 2.

Q. Will you very briefly explain chart No. 2?

A. I might say, before we get to chart No. 2, that these [fol. 729] lines in chart No. 1 are typical of the system so I did not have all the lines charted on the Market Street Railway.

Chart No. 2 shows typical lines of the Municipal Railway for both morning and afternoon peak periods. These lines also have irregular service and practically all have load factors of over 2. Particular attention is drawn to the No. "N" line, outbound in the afternoon, that is on the lower right hand corner of the chart. At certain times service on this line is irregular, but in all cases there is a load factor well over 2.

Q. Now, Mr. Hall, will you explain your chart No. 3, please?

A. Chart No. 3 consists of two sheets, shows the actual performance as compared with operating schedules on a number of Market Street Railway lines.

For example, referring to sheet 1 of chart 3 on the No. 5 line, about the middle of the sheet the schedules are shown by open circles and the actual performance at the

checking point at Market and Sansome Street by closed circles. The solid line between open and closed circles indicates that the car carried a run number and could be identified with the schedule; the broken lines between open and closed circles indicates that the car did not carry a run number and the car was assumed to be of the run number indicated in the schedule.

When the connecting line sloped to the right the car is behind schedule; when the connecting line slopes to the left [fol. 730] the car is ahead of schedule.

Q. Now, Mr. Hall, your chart No. 4, as I understand it, shows like information regarding a number of lines on the Municipal Railway and the same explanation applies?

A. The same explanation applies, yes.

Q. Now, will you turn, then, to your chart No. 5 and briefly explain it?

A. Chart No. 5 shows load characteristics and headways of the service of Market Street Railway on Third Street, giving a comparison of performance on three different dates, December 10, 1942, April 30th, 1943 and May 26th, 1943.

For December 10th, 1942, the actual performance only is shown for both rail and motor coach operations in both directions as that was the only data secured at that time; for April 30th, 1943, the actual times of passing the checking point are shown as well as checks of the number of passengers carried on each street car or bus. The dotted line indicates the seating capacity of the vehicles.

For May 26, 1943—

Q. May 26, 1943?

A. May 26, 1943.

Q. Yes.

A. This chart shows the actual rail and motor coach headways as compared with the scheduled headways. The schedules are shown by open circles and the actual operations by closed circles. It is to be noted, however, that actual service is not connected with a schedule as the street car and motor coaches did not carry any schedule numbers.

[fol. 731] Q. What do you show, Mr. Hall on your chart No. 6?

A. Chart No. 6 shows information on the Los Angeles Railway similar to the information on charts 3 and 4 for

the both Municipal—for the Market Street Railway and the Municipal Railway.

Q. And the same explanation applies?

A. And the same explanation applies.

Commissioner Sachse: I would like to get one thing clear, Mr. Hall. When you spoke of the graph for May 26, 1943, you said that the open circles were the schedules and the dots, the closed circles, the actual performance, but you could not connect the scheduled service with the actual service because there was no identification of these runs?

A. That is very true, yes.

Q. Now, nevertheless, regardless of whether you could identify any runs the solid dots do show that whatever these runs might have been they did not coincide with the schedule runs?

A. No, not by any means, because there are many more schedules shown, particularly with the motor buses than there were actually run.

Mr. Cassidy: I offer this pamphlet containing the tables and charts as the exhibit next in order.

Commissioner Baker: It will be received and marked Exhibit No. 11.

Mr. Cassidy: Mr. Hall, have you certain photographs [fol. 732] taken by you or under your direction?

Commissioner Clark: Pardon me, I would like to ask a couple of questions regarding the exhibit, if I may, Mr. Chairman.

Commissioner Baker: Very well.

Commissioner Clark: I understand that Mr. Cahill has indicated that in case the equipment that is now idle belonging to the Market Street Railway were made available to him that he would operate it. Do you understand that to be the case?

A. That is the way I understand his testimony this morning.

Q. Do you believe that if this equipment were made available to him that he would and could operate it?

A. Well, I don't know whether he would; he could.

Q. But you know whether what?

A. I do not know whether he would, but I say he could.

Q. He could. Do you believe that there would be any doubt about his being able to get the personnel, the manpower to operate those cars?

A. Well, we all know the manpower situation is serious and the Municipal Railway right now is having trouble getting manpower, as well as the Market Street.

Q. The same as the Market Street Railway?

A. Not as severe as the Market Street, but they are having some trouble.

Q. Do you believe, then,—I will again ask the question [fol. 703] if these cars the Market Street Railway are unable to operate, according to their testimony and statement because of lack of manpower, that if they were made available to the Municipal Railway that they could be operated and would be operated? In other words, that the manpower would be made available?

A. Well, if the manpower could be made available. Now, I can not guarantee that, whether manpower will be available or not.

Q. In making these investigations that resulted in this last exhibit do you believe that you concerned yourself sufficiently with the situation to come to the conclusion whether or not the manpower could be made available under the conditions of employment as they now exist with the Municipal Railway?

A. Of course, that depends materially on what—how much effort is put into securing their new employees and holding their old.

Q. Can you—

Mr. Cassidy: I believe, Mr. Commissioner, that Mr. Cahill testified in part concerning some of those questions.

Commissioner Clark: Unfortunately Mr. Cahill is not here and I would just like to ask Mr. Hall's opinion, as a representative of the Commission, presumably has made a very thorough study of this entire matter, I would like to ask, if, in your opinion, based upon your investigation and conclusions that you would arrive at as a result of your investigation, if these cars were made available to the [fol. 734] Municipal Street Railway would and could Mr. Cahill be able to operate them?

A. He could operate them is he had sufficient manpower.

Q. Do you believe—

A. And could get sufficient manpower.

Q. Based upon your observation and upon investigation, do you believe that manpower could be made available to operate these cars which presently, I understand, are not being operated because manpower is not available?

A. Well, I would say this, that it depends on various conditions surrounding employment with the Municipal Railway and the effort that the Municipal Railway puts into securing more men, whether they could get them or not.

Q. Because the Municipal Railway's experience is somewhat more favorable than the Market Street Railway at the present time as your exhibit would indicate, do you believe that is because of more effort to get employees by the Municipal Railway than the Market Street Railway?

A. Yes and no. They have also a little more favorable working conditions on the Municipal than they have on the Market.

Q. More favorable working conditions on the Municipal Railway?

A. Yes, as shown by—

Q. Well, you believe it a combination of additional effort made to procure additional employees plus the fact that they have, as an inducement, more favorable operating [fol. 735] conditions for those employees?

A. Under present conditions they have a little better inducement for the men and they probably could get them a little easier than the Market Street Railway.

Q. Then you believe, at least, that the Municipal Railway, for that reason, would have a better chance to procure additional manpower to man those cars than the Market Street Railway would be able to do?

A. Under present conditions.

Q. We are talking about present conditions, of course. We do not know what they will be in the future except projecting them based upon the past.

I would like to also ask a question regarding the comparison of shop labor conditions. It would indicate, by your exhibit, that shop labor is being paid on a more favorable basis by the Municipal Line than by the Market Street Railway. Do you agree on that?

A. Yes, the Municipal—

Q. Pardon me. You are sufficiently familiar with the facts and figures in your chart here to answer "yes" to

that question, are you not, Mr. Hall, without looking at it?

A. Well, I wanted to see. The figures in front of me show the Municipal Railway have a much more favorable rate base.

Q. I am aware that they have, according to your figures. I am surprised that you had to look at your data. May I just ask this question: What is the relative condition of [fol. 736] the equipment between that of the Municipal Railway and the Market Street Railway that might be attributable to the lack of or availability of manpower in the way of shop labor?

A. I haven't examined any of the equipment of the Municipal Railway nor gone into their shop practices.

Q. You would not have an idea as to the condition of the Municipal Railway equipment, generally speaking, as compared with the Market Street Railway?

A. No, I would not hazard a guess. It would have to be a guess if I answered the question.

Commissioner Clark: Ok, thank you.

Mr. Cassidy: Mr. Hall, I believe you stated you had certain photographs that were taken by you or under your direction?

A. I have, yes. This first photograph that—

Q. Will you explain the first photograph that you have, Mr. Hall?

A. This first photograph was taken at Kearny and Market Street on June 15, 1943, between 5 P.M. and 5:20 P.M. The camera was located on the north side of Market Street and showing the crowds at the safety zone in the vicinity of Lotta's Fountain. This particular view shows a "K" car of the Municipal Railway loading and people on the safety zone.

Mr. Cassidy: I offer the picture as the next exhibit in order.

Commissioner Baker: It will be received and marked Exhibi- No. 12.

[fol. 737] Mr. Cassidy: Will you explain the second photograph, Mr. Hall?

A. The second photograph was also taken on June 15, 1943, between 5 and 5:20 P.M. on the north side of Market Street at 3rd, showing both a No. 9 and a No. 5 car load-

ing. We can see only the rear end of the No. 5 car and only the front end of the No. 9 car. Also the crowd standing on the safety zone at that point.

Mr. Cassidy: I offer the photo as the next exhibit.

Mr. Kahn: Is that a No. 7 car instead of a No. 9 car, Mr. Hall?

A. No. 7, I beg your pardon. It is a No. 7 instead of a No. 9.

Commissioner Baker: It will be received in evidence and marked Exhibit next in order, No. 13.

Mr. Cassidy: Will you explain the next photograph, Mr. Hall?

A. This photograph is also taken on June 15, 1943, at the same location. As a matter of fact these 3 photographs were taken all about the same spot, and also between 5 and 5:20 P.M. This photograph shows a No. 5 car loading with the crowd on the safety zone.

Mr. Cassidy: I offer that as the next exhibit.

Commissioner Baker: It will be received and marked Exhibit No. 14.

Mr. Cassidy: Will you explain the next photo, Mr. Hall?

Commissioner Craemer: I think you are wrong on the number of the car. I can not see a 5, I see a 9, and "L" and 31, I think it is.

A. It is an "L" car closest to the camera and the 5 [fol. 738] car is on the inside track.

Commissioner Baker: Are you certain that is not a 9? Perhaps it is not material, but nevertheless it looks to me as though it is a 9.

A. It is a 9 car on the inside track opposite the "L" car on the outside track; those being followed by a No. 31 car.

Mr. Cassidy: Will you explain the next photo, Mr. Hall?

A. This photograph was taken at the safety zone on 3rd Street opposite the Examiner Building at 3rd and Market Street. It shows two buses, one of which the passengers are loading into and I think the picture shows pretty clearly that the bus is pretty well crowded with passengers. The following bus, however, is so far in the distance it does not tell us very much, although in the foreground you see a crowd of people on the safety zone.

Mr. Cassidy: I offer that photo as the next exhibit.

Commissioner Baker: It will be received and marked Exhibit No. 15.

Mr. Cassidy: Now, Mr. Hall, you have before you a large photograph. I understand you just have the original here. Will you state what that depicts?

A. This photograph is made up of a combination of three photographs joined together taken on July 14, 1943, at 10:30 A.M. of the Market Street Railway's storage yard at Irving Street, Lincoln Way, Funston Street and 14th Avenue, San Francisco.

Mr. Cassidy: I offer the photograph identified by the [fol. 739] witness as the next exhibit.

Commissioner Baker: The composite photograph referred to by counsel, identified by the witness, will be received in evidence and marked Exhibit No. 16.

Mr. Cassidy: That concludes the direct examination of Mr. Hall.

Commissioner Sachse: Mr. Hall, this photograph, what it shows is a lot of cars. Is that the regular, normal storage or have these cars any special significance?

A. Those cars are the cars that are in dead storage and are not in use, although a few of the cars in the center of the picture are stored there over night and are in use.

Commissioner Clark: Those that are in dead storage are the others?

A. They are not being used.

Q. Did you investigate to determine the reason that they are not being used?

A. They haven't any place to put them. And, of course, quite a group of them are straight one-man cars that can not be used in San Francisco.

Q. What do you mean there is no place to use them?

A. Their complement—they have a sufficient complement of cars now to fulfill the schedules that they are operating.

Q. And you consider the schedules adequate to handle the public requirements and needs satisfactorily?

A. Schedules should be augmented, there is no question about that.

Q. Elaborate upon that a little bit further in answer to [fol. 740] my question.

A. There is many points where the loads are getting excessive and the service could well be augmented.

Q. Then, boiled down, there are enough cars in operation and manned to meet the requirements of the schedules as they are now established, but in your opinion the schedules are inadequate in frequency to handle the needs of the public as they should be served?

A. There should be certain augmentation of schedules.

Q. Would you care to go into the detail to make a recommendation or give us the benefit of what your thoughts are in that respect at this time?

A. Of course, my thoughts on the thing is a matter that you have got to watch your load characteristics from day to day and as your load characteristics change schedules should be changed to meet that load characteristic. Loads may be increased on the No. 5 line and you find those loads are increasing so that you can have abnormal loads—beginning to take on abnormal loads, the service should be increased accordingly. You might find another line where the loads are gradually decreasing and schedules should be revised to meet that decrease.

Q. Do you believe any improvement could be made, then, by closer supervision of the operations to make sure the equipment that is now in use is available where it is most needed?

A. Very close supervision must be had at all times to [fol. 741] get the most economical use out of the—what is being used. Now, I think closer supervision could be had on the Market Street System.

Q. In addition to that you believe that if this additional equipment, or part of it, were manned properly and put in shape mechanically that it could be used to advantage to serve the public who are dependent upon that service?

A. Oh, I think so, yes.

Q. Why do you believe that has not been done? Did you get any satisfactory explanation in connection with your investigation of it?

A. Well, of course, the big problem is there is not much use of keeping in service any more cars than you can man. Now, at the present time there is—if the men had not consented to working over time they would be unable to get out as many cars as they are getting out right now. Now, if they could man those cars they could use them.

Q. You before stated that the working conditions on the Municipal Railway were more favorable than under the Market Street. Do you think that if the Market Street Railway improved their working conditions to the degree that it would attract more men and hold more men that might result in manning some of these additional cars?

A. Well, I think that is axiomatic.

Q. The answer then would be "yes". Would, in your opinion, the repair of these cars be better handled if there [fol. 742] were a greater number of mechanics available in the shop?

A. No question about it.

Q. You believe that would result in a general improvement of the maintenance of all the equipment in the system, do you not?

A. Yes.

Q. Do you believe that an increase in wages to the men would probably make available additional men?

A. It may. Now, I want to qualify myself there. I mean I do not think I am qualified as a personnel relation man, but as my opinion that is one of the things that would help out in gaining employment.

Q. And you believe the conditions as you found them following your investigation, during your investigation would warrant a general adjustment, do you?

A. Of wages?

Q. Yes.

A. No, I won't recommend anything with respect to employees' wages as I feel it is without my province to make such a recommendation.

Q. I was not asking about a recommendation, I was asking that if, in your opinion, an improvement of wages to the labor, the shop men and the railway would result in a greater number of personnel being available, and, therefore, result in a greater number of cars being kept in condition to run and an improvement in the condition of those that are running?

A. It should.

Q. Do you believe it would?

A. Yes, I think so, yes, although as I said, there is a [fol. 743] great many things in personnel relations that I am not too familiar with. I would not want to guarantee that answer.

Commissioner Clark: I appreciate that.

That is all.

Commissioner Baker: Nothing further?

Nothing further of Mr. Hall? Recess briefly at this time. (Recess.) The Commission will please be in order.

Next witness.

Mr. Cassidy: Mr. Hunter.

J. G. HUNTER, recalled.

Direct examination:

Mr. Cassidy: Mr. Hunter, are you familiar with the exhibits presented by Mr. Mors and Mr. Hall, and the studies made by them?

A. I am.

Q. Those studies were made under your general supervision?

A. That is correct.

Q. Have you arrived at certain conclusions and recommendations as a result of the various studies?

A. Yes, I have.

Q. And have you prepared a report?

A. I have.

Q. Will you explain the report that has just been distributed?

A. At the outset I would like to make it clear that the observations and recommendations contained in this report are based upon prevailing conditions, war time conditions. If we were experiencing what I would call normal conditions I think our approach to this study would be entirely different. But, we find a situation here today [fol: 744] that I think requires some action in the interest of getting for San Francisco better service.

I have prepared a report here consisting of 11 pages. In view of the fact that it has been passed around it might be well to just touch on the highlights.

Q. Will you do that, Mr. Hunter?

A. Reading in part:

I think our exhibits introduced in this record supports the conclusion that the service on the Market Street Railway should be improved. In our study we have attempted to, first, test the service on the ground through other in-

formation and then, from that information, attempt to draw conclusions.

Here in San Francisco we find a rather complicated situation with respect to street transportation. This City is served by four different transportation agencies; the two carriers transporting the larger number of passengers being the Municipal Line and the Market Street Railway. As has been testified by Mr. Mors at this time these two carriers each transport about the same number of passengers. The next carrier in point of volume is the California Cable and the smaller group is transported by the jitney buses, there being some 134 of such buses operating in this City under a permit from the City of San Francisco.

These transportation agencies do not issue transfers between their systems except to a limited extent. The rail lines do have a number of points where they issue and honor [fol. 745] transfers between them.

The complicated street layout in San Francisco makes street transportation a rather difficult problem. That, together with the service divided between four interests, all with different fares, adds to the confusion and the difficulty of solving the problem. The Mayor stated this morning that, in his opinion, this transportation situation in San Francisco would not be solved until all of the transportation agencies are under one management: I think the Mayor is correct in his position there. However, at the present time it does not seem that that is soon to be realized, therefore, we must proceed with the situation as we find it today.

Engineers Mors and Hall have presented here today exhibits which I think support the conclusions and recommendations in this report, therefore, I will proceed to pass to the conclusion as I see it. I will repeat that I think the service on the Market Street Railway should be improved even under war time conditions.

Just as a brief explanation as to how the schedules are developed I will refer to the system they employ, because in the last analysis it is the schedules and the performance of those schedules which give you service.

The Market Street Railway have a schedule department which, of course, is common with every transportation agency; these schedules are next referred to the represen-

[fol. 746] tative of the labor organization who have the interest to see whether or not they conform with their agreements.

After the labor representative has passed upon the schedules they go to the various divisions of the Company, there being 5 rail divisions, one cable and one bus division.

When the schedules reach the various superintendents of the divisions they put the runs up for bid. As the platform men are organized they bid on the various runs.

At this time the Market Street is suffering severely from lack of manpower; that is not uncommon to the Market Street Railway as it is practically the case with every industry today. Perhaps Market Street is in a more severe situation than many others and more severe than the Municipal.

The dispatcher at the division attempts to fill the schedules as best he can with the men that are available, and women. They now have quite a large personnel of women employed on the Market Street Lines and they make an effort to fill the schedules as completely as they can. Mr. Hall showed in his exhibit how far they failed from filling those schedules today, and you will recall that the situation is getting worse with the Market Street Railway. I think in June it was something like 10 per cent failure to perform.

One of the very important features of any service is the field supervision. This Company, like most other street [fol. 747] transportation companies, has inspectors on the ground whose duty it is to see that the cars are kept on schedule in so far as they are able to do so, and in view of the importance of that position I prepared a table which appears on page 4. This table relates to the street car operations of four transportation companies in this State, being the Los Angeles Railway, the Key System, the Municipal Line and the Market. It may be noted from this table that in relating the number of field inspectors employed by the Market Street Railway with the other three agencies there, the Market Street has the bigger percentage of inspectors, being 16—being one inspector, on the average, there is one inspector to 16 cars in the case of the Market; in the case of the Municipal there is one inspector to 32; the Key System there is one to 27, Los Angeles Railway one to 30.

Now, it would seem from that table, standing by itself, that they should have an over-abundance of inspectors compared to these other carriers. But I think you have to go further and consider the conditions under which these carriers operate. I do not think any of the carriers have the complicated problem that the Municipal does with respect to keeping its cars spaced. Most of those lines use the Market Street tracks with different diverging points, they have their cross-town lines, and I would say that their need for field inspectors is greater than any of the [fol. 748] other three, considerably greater.

I also call your attention to the fact that the rates of pay to the inspectors on the Market Street Line is \$180 a month and this does not take into consideration the men who are over the field supervisions, I mean—I am just taking their field supervisors; there their pay is \$180 a month compared to the Municipal \$200 to \$240.

Q. May I interrupt, Mr. Hunter? Just a few moments ago you referred to the great need for inspector. To which lines were you referring, the Municipal or Market?

A. The Market.

Q. The Market?

A. Thank you.

Now, we see, there, that the Key pays its field inspectors from \$210 to \$225; Los Angeles Railway \$215.

I do not present that with the thought of adjusting salaries, but I think it is an element to consider in connection with this operation. These field inspectors occupy a very important position in this service and I think the charts have definitely demonstrated that there is too much grouping of cars on the lines of the Market Street Railway. I can speak both from the charts and personal experience. I am not taking the position that the Market Street Railway does not have a difficult job to perform there, but I do feel that there is an opportunity to better the service by some improvement in the field inspection work.

Commissioner Clark: May I ask, Mr. Hunter, what constitutes an inspector? Is he openly known to the men as an inspector, or in some instances does he work under cover to watch whether or not fares are being properly deposited?

A. He is the man on the street, very often in uniform, who has authority to turn cars back or hold cars. You see them stationed along Market.

Q. In all instances?

A. In all instances.

Q. When you refer to an inspector you refer to that man that has to do with the service of the Company?

A. That is correct.

Now, I have referred to the manpower situation and, of course, there is the very major item that must be dealt with. Mr. Hall's exhibit shows the lack of manpower with respect to getting the schedules out and I think it could be said that even though schedules could be increased if they had the manpower, but certainly the schedules that have been designed to meet the traffic requirements should be in operation to give the City reasonable service, and I think the matter of making schedules is one of the most important things in street transportation operations because it is the schedule department that determines the need for facilities along the various routes. Perhaps the Market Street Railway is doing the best job it can in that respect, but I would not overlook the opportunity of saying that I think that everything should be done to keep in tune with the traffic needs when and if more men are available.

[fol. 750] Now, the Market Street is attempting to attract additional employees. I find that between July 17, 1942 and July 10, 1943, they spent \$7500 in newspaper advertising. They contributed to 275 issues appearing in four San Francisco daily papers.

May to June, 1943, they spent \$274 on radio. That does not seem to be a very big figure, but that is it.

They also carry in their cars the bulkhead posters up on the top of the car calling attention to their need for employees.

They also have a plan whereby they give an employee a \$10 bonus if he will interest a man or woman in taking employment with the Company and I think he gets his \$10 after the new employee has been with them 60 days.

All in all they have spent over \$8000 in the past year to attract additional employees. I have little to offer as to what they could do more than they are doing, but it has occurred to me that there is a possibility of attracting

some new employees through maybe personal contact, maybe if arrangements were made to take employee for short periods of time, men who work in offices who would be willing to take a run, say, Saturday and Sunday. I think, however, that if that plan is pursued that there should be reasonable compensation for the men and women who are interested in that during their period of time in which they are breaking in. As I understand it that is [fol. 751] rather low. That conclusion is based upon the fact that you see in the newspapers advertisements every day whereby shipyards and war industries and others give substantial salaries and rates of pay even for beginners.

I will next discuss the matter of two-man car operations. This Company did operate one-man cars for about 4 years, I think it was, between 1935 and 1939, and was stopped from that practice by an order of the Court. They now have some 131 one-man-two-man cars, cars which were converted over to one-man operation. These cars are now available for service, in fact many of them are now in service. If, for the duration, when the labor shortage is so severe, that was suspended it would have a material effect on releasing a number of employees which would, in turn, permit of putting more cars on the street.

Now, in considering that plan I do not think you can ~~just open the gates without giving some thought to the~~ program that should be considered. Certainly the lines where the traffic is lightest should be the lines under consideration and where a line has heavy loading points ground loaders should be provided. But I feel that now we are in this war, with a shortage everywhere, that consideration should be given to suspending, for the duration, that ordinance which prohibits the use of one-man cars on the streets.

Commissioner Clark: May I ask, Mr. Hunter, in that [fol. 752] connection would such a move impose additional duties upon one-man operating the car?

A. Yes.

Q. I notice the record heretofore indicated that a severe turn over is already experienced by this Company. Do you believe that the men that are now in total number operating the cars, in many instances two men to a car, would be reduced by reason of leaving the Company and

seeking more favorable employment if that additional burden were imposed upon them or not?

A. No, I think not. It is common practice to pay men a little more salary for operating one-man cars.

Q. Then, that is what I was coming to. Then there would be an offsetting inducement recommended probably to make it possible so that it would not result in a loss of interest in the men holding their positions?

A. Yes, I would definitely recommend that men who take on additional duties get additional pay. Of course, in selecting the personnel to run one-man cars you must pick your men. As Commissioner Clark has referred to the matter of additional duties, he does have additional duties, he should be alert, and one-man operation of old equipment is more severe than would be the case if they had new equipment, such as the PCC cars.

Q. That particular Company does now operate one-man cars on some schedules, doesn't it?

A. The Los Angeles Railway does, San Diego does.

[fol. 753] Q. The Market Street Railway do not in any instance?

A. No.

Q. That ruling covers all their operations?

A. All of their operations.

Q. Does the L. A. Railway pay those individuals operating the one-man cars a higher rate per hour than they pay those who operate two-men cars?

A. That is my understanding, yes.

Q. Do you have an idea of about what the difference in compensation is?

A. It is around 5 cents an hour, something around 5, it might be a little more. Less than 10, I am quite sure.

Mr. Holm: Mr. Hunter, would you pardon an interruption for a moment until I advise the Commission that the ordinance that Mr. Hunter is referring to is really an initiative ordinance. It was passed, in this respect by the people. The Board of Supervisors some years ago submitted to the voters the question of whether they should favor an ordinance limiting the operation of cars to one man. That ordinance, in whatever form, I do not recall now—what its precise form was I do not know, at least it limited the operation of street cars within the City to two men, and before that ordinance could be removed from the

books, as far as the City is concerned, it would require an election and have the people themselves undo what they did because the Board of Supervisors could not repeal that ordinance.

[fol. 754] Commissioner Sachse: That ordinance was sustained in Courts, was it not?

Mr. Holm: Yes, it went to the United States Supreme Court.

Commissioner Sachse: Right on that point, while we are discussing that, if two men operation was justified because of difficult operating conditions and peak crowds on the cars at any one time in the past would you say, then, that it is then justified in view of the present traffic conditions more particularly at this time, from the standpoint of operating difficulties?

A. If you could compare those two conditions it certainly would obtain. However, I think you have to choose the plan which will give you the most relief. I think now, with our very severe manpower situation that the public at large would benefit by permitting this carrier to operate with one man on certain lines under certain conditions. But, it is true that if the conditions are the same your answer should be the same. ~~I think perhaps it would have the effect of slowing up the service some, but I think that could be met to a considerable extent if ground loaders are provided.~~

Q. Have you any data to show whether the manpower shortage is less severe in cities where you have one-man operation as compared with San Francisco where you have two-man operation?

A. I have the Los Angeles Railway.

Q. Is the manpower shortage less severe there?

[fol. 755] A. Less severe than Market Street.

Q. Is it less severe in San Diego?

A. I do not happen to have San Diego.

Commissioner Clark: Is it less severe than the Municipal?

A. Market is much more severe than the Municipal.

Q. How does the Los Angeles Railway compare with the Market Street or Municipal Railway condition here?

A. As to their shortage?

Q. Yes. The L. A. Railway operates one-man cars in many instances?

A. That is right.

Q. The Municipal here does not?

A. That is right.

Q. Now, the L. A. Railway conditions as far as employees available to run their cars compared with the Municipal Line, which is the more favorable?

A. The Municipal is more favorable. They practically fill their schedules.

Commissioner Sachse: That is a fact, notwithstanding that the Municipal also operates under two-man operation?

A. That is correct. I have now a chart here showing that in the case of the Los Angeles Railway for one-man bus operation the pay is 10 cents more than two-men street cars and I rather think that is the same for one-man cars versus two. Now, I will discuss for a moment the matter of the net operating income. The records of this carrier, Market Street Railway show that their net operating income between the years 1922 and 1942, inclusive, a 21-year period, amounted to \$878,000 on the average. This varied [fol. 756] from a high in 1923 of \$2,088,000 to a low of a loss of \$40,000 in 1938. Our studies show us that for the year ending May 31, 1943, the net operating income amounted to \$1,266,000. That is shown on page 9 of my exhibit.

I will now turn to the recommendations. I have already discussed the matter of improving the service and referred to field supervision as being one thing to consider. Certainly it is the duty of this carrier to do everything in its power to provide the best service possible, and in looking over these charts that have been introduced by Mr. Hall I think it can be fairly said that there is and should be an improvement in that situation because many of the cars operate ahead of schedule, which is contrary to good practice. We find that in many cases there are groups of cars coming together, followed by rather long intervals of no cars.

I have tried to explain that I think they have a difficult problem, but still there is room for improvement there even under present war time conditions.

On this manpower situation one thing that would give them more relief would be the suspension of the two-man car ordinance for the duration; if that were in effect, of course, it would be available to the Municipal as well as the Market Line.

I do not know how much further they can go in the way of attracting employees. Of course, the wage scale is important, there is no doubt but what many of their employees left to go to the shipyards and other places where the rate of pay is higher. There is no question but what many would come back if the rate was the same as the shipyards, but, of course, we have to consider the general standards surrounding any business. It has always been the case that street car operations are sort of built up around a certain standard of working conditions and labor, which is not very high, and any increase in the wage situation should reflect in the rates, as the labor is important, being over half the operating expense.

If they are permitted to operate with one man they certainly should use that manpower to put more equipment on the street, and I think it can be said that not a single person who wants to continue in their service would get away because they are trying desperately to get additional employees today, so it is safe to say if that were put in operation that men and women employed by that Company can be assured of a job for the duration at least.

And I next refer to the matter of speeding up the operations. The Market Street Railway has in effect a skip-stop plan in the outer portions of its system. They stop at every other block. That has been fairly well taken care of. There is a situation on Market Street that I think could be improved and I see in the papers where the matter is actively being considered by the Traffic Advisory Commission of [fol. 758] San Francisco, which is composed of representatives of the different branches of the City Government and it was my understanding that they had agreed on the elimination of a number of stops on Market Street. This, of course, is a rather capital operation because it involves coordinating the signals with the stops, eliminating crosswalks, and it is a matter that should not be treated lightly, but I was impressed by the plan of eliminating additional stops along Market Street and I think that it is something that the City should go along with in the interest of bettering the service because the more stops the slower the service.

and I think on the over-all basis it is better to have infrequent stops and require a little walking to the individual, but in the main they will benefit by spacing the stops. The ODT has issued a directive prescribing 6 to 8 stops per mile. Of course, that can not be applied blindly on congested areas like Market Street where you have important cross-streets; they have to be protected. But there are a number of stops along that street that I feel could be eliminated.

Commissioner Clark: May I ask, Mr. Hunter, is it your opinion that such a move would likewise decrease operating costs?

A. Yes.

The next item I have listed here is a matter that was touched upon by both the Mayor and Mr. Cahill this morning. I feel that there should be something done in the way [fol. 759] of making the greatest use of the available facilities in this City, particularly at this time with the war needs for transportation. Our checks show that the tracks on Market Street are out of balance; the outer tracks are carrying more traffic than the inside tracks and, coincident therewith, speeds are slower on the outside tracks and there can be no question but what if this was all one property that situation would be taken care of.

The agreement I think should also take into consideration the matter of putting as much equipment on the roads as can be manned. Our study shows that the Municipal Line is suffering for lack of manpower also, so I do not know what they could do with more equipment if it was offered them, but one thing is certain if they were given the opportunity to use the inside tracks it would have the effect of speeding up service to some extent.

Of course, there is a possibility of some turn backs before they enter Market Street which would relieve the congestion some.

The next thing I have—

Commissioner Sache: Before you leave that, Mr. Hunter, do you know whether the Market Street Railway has initiated or prosecuted any moves to attempt to come to some agreement with the City both as to the best use of those tracks, joint use, I mean, and also putting to use the available cars that are now stored that we have heard so much [fol. 760] about? In other words, putting them to use either

on its own lines or if there is still any equipment left, renting them under some agreement to the City?

A. I do not think the move has come from Market. I think it has come from the Municipal, if the carrier were responsible for it. I do know this that there was a meeting over in Mr. Crowe's office where that question was discussed and Mr. Crowe was kind enough to give me a copy of the minutes and no agreement was arrived at when this question was considered.

Q. If—assume now that such an arrangement could be made, mutually satisfactory arrangement, and also one which would improve the transportation situation, would such an agreement be, necessarily, disadvantageous to the Market Street Railway from an earning standpoint or could it be made a source of additional income to the Market Street Railway?

A. You would have two forces to balance. You would have the earnings from the leased property and against that you would have the passengers that would be carried by this leased equipment which now ride the Market because they can not get on the Municipal Line; they are forced to ride Market at the added cost.

Q. Wait a minute, there. If you had additional equipment, regardless, now, who operated it for the moment, wouldn't you have additional passengers that you could handle? In other words, isn't it true during peak hours, particularly, more traffic is offered which means more revenue offered, than actually can be taken care of?

A. That is the condition today.

I next refer to the matter of the value of the service. Although this study and investigation does not analyze the rate situation I do not think we can not entirely close our eyes to the value of the service. Obviously, they should be in balance as near as can be at all times and with the service getting worse, I will say, on the Market Street, or at a low stage there is no question but what the passengers are getting less for their money today than they were when they got better transportation. But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service. If you desire to go from the station to your office up town, 3rd and Townsend, say, the public is willing to stand, but they would like an opportunity to get any kind of service.

But, nevertheless, they are getting less for their money, much less than in normal times, and I think we have to think of that.

In connection with ~~the~~ service study now, that leads me up to this next recommendation.

Q. Wait a minute, if I may interrupt you there. I would like to get your view a little clearer on that No. 6. As I recall it you used the phrase or the language that we should not and could not entirely close our eyes to the value of the service. Wouldn't you rather say that we should not keep [fol. 762] our eyes open to the value of the service?

A. I think your observation is very well taken.

Q. Now, let us look at the value of the service. Let us see what we mean by that—what you mean by it. Let us assume that Market Street had done everything possible that it could do, that nothing could be done to improve the service. Let us assume that, I do not think that is the fact, but I want to assume it. And that the public simply had to be satisfied with that poor service, as you say it is, much poorer than it was in better days. Do you think, then, that the public should, nevertheless, pay the same price for poor service as they formerly paid for good service, regardless of whose fault it is, whether—regardless of whose fault it is, if it is anybody's fault, that poor service is there.

A. The answer to my mind is that they should not.

Q. Now, when you look at Exhibit No. 10, Mr. Mors' exhibit, would you say that the service that was rendered by the Market Street Railway in the years 1937 and 1938, with a 5-cent fare, was superior to the value of the service now from the standpoint of the car rider, of course, that they now receive under the 7-cent fare?

A. Oh, the earlier service was superior.

Commissioner Sachse: That is all the questions I have.

The Witness: The next recommendations has to be considered in the light of all of these things I have mentioned, [fol. 763] and I would like to refer to this as a war time measure, and I want to place emphasis on the question just asked by Commissioner Sachse. Here we find a very unusual condition; we find a situation where the carrier is in a relatively favorable earning position for the present, and I think that will continue for the duration and for a reasonable period thereafter. The service is poor, the public has to accept it.

Now, it seems only fair to me to the Company and it certainly is in the interest of the City, that some program should be made now whereby a fund will be created so that after the present hostilities and facilities and men are available, San Francisco can expect a reasonably good transportation agency here. And let me say that San Francisco is one of the best towns in the United States with respect to street transportation business. There is no reason why this City should not have as good transportation facilities as any City in the country because it is a congested City where the riding habit is higher, I think, than any City, unless it is New York.

Now, looking ahead—

Commissioner Sachse: If I may interrupt, isn't it also true that the average haul is about as short here as it is in any big City or shorter?

A. That is correct and that is an item that goes into the cost of the service. We have a high riding habit and an [fol. 764] average short ride. Those things go to make a profitable operation. But, unfortunately, you do have this combination of transportation agencies here to which I have referred.

I think the thing to do now is to program for the future. I think it is only fair to the Company, who I think is entitled to some prosperity, it has experienced hard times in the last few years, but even with that I think now is the time to lay aside a fund so that when facilities are available they will be in the position to take advantage of them, they will be in a position to pick up the deferred maintenance. If they are to continue in service in this City I see no reason why it should not be a profitable business, even with the competition of the City.

They do have competition for a considerable portion of their system. However, there are lines which are not in competition with any other carrier and I feel that the Market Street Railway can look ahead to future operations with prosperity if it surrounds itself with modern equipment, and to insure that I think the thing to do is to create a fund, a plan whereby these earnings are impounded. Withdrawals from the fund to be subject to the Commission's approval.

I feel sure that the Commission would be reasonable in authorizing any expenditures from that fund if it was

shown to be in the public interest. I have not, perhaps, gone into this question far enough to write a formula for [fol. 765] it, but I do think that the thing should be considered and I have attempted here to call it to the Commission's attention with the thought that if it is worthy of consideration they could consider it. Doubtless the Company will have some views on it so we will get the other side of it.

I think, Mr. Cassidy, that completes my direct.

Commissioner Sachse: On that last point, No. 7, I notice that you list these items that you think revenue has to be used for in a certain order. I take it that that order has a significance, hasn't it? To make myself clear, operating expenses, of course, come first.

A. That is right.

Q. And the way the Commission and the accounting requirements are, taxes are part of operating expenses?

A. That is correct.

Q. So operating expenses and taxes, of necessity, come first. And is it sound to say that expenditures for operating the service should always come first?

A. That is correct.

Q. Not only because the law and the bookkeeping requirements are that way, but in the interest of the public and the operating companies themselves that is true, is it?

A. That is correct.

Q. Now, then, interest is the next item. Interest is a part of the return, isn't it, if there is any return on the investment or on the value of the property or on any rate [fol. 766] base the interest is part of that return?

A. That is correct, interest on securities.

Q. Then the other two items, sinking fund payments and equipment notes, are retirements of capital, aren't they?

A. Sinking fund payments in this case is required by the bond issue. As I understand it at the time the bonds were refunded the Company was required to set aside some \$300,000 a year. Now, if they did not comply with that, as I understand it it would immediately upset that contract.

Q. I am not saying that it should not be complied with, I do not even want to intimate that. I am simply saying that those last two items, any sinking fund payments that are set aside to retire bonds just reduces the capital to

that extent, I mean the outstanding obligation of the Company to that extent?

A. That is correct.

Q. And the same thing would be true with retirements of equipment notes?

A. That is right, that is, purchase of equipment.

Q. Those first two items are operating expenses; the second item, interest, is a part of the return and the third—next two items, last two items would mean that the Company would be put in a position to reduce its indebtedness?

A. That is correct.

Commissioner Clark: I would like to ask this additional question, please. On page 7 your second paragraph starts out: "The service to the City as a whole would be im-[fol. 767] proved if the facilities of the Market Street Railway and Municipal Lines were consolidated, or at least an operating agreement", and so forth. Do you refer there, as you start that paragraph, to a general consolidation of the entire facilities of both operations?

A. Yes.

Q. Do you have any formula to suggest that could be properly recommended by this Commission whereby such a consolidation of operations could be brought about?

A. Yes, I prepared two reports prior to the two recent elections which sets forth my recommendations that the property be purchased out of earnings.

Q. Do you believe that at the present time the Railroad Commission should and could properly recommend such a procedure taking place?

A. Well, speaking for the Commission or me?

Q. I am speaking of the Commission, would you recommend to the Commission that the Commission concern itself with the matter and favor such a program?

A. I personally would be favorable to recommending to the Commission that steps be taken to acquire the property of the Market Street Railway, operating property, by the City.

Q. Outside of its purchase by any method do you know of any other operating agreement—have you given thought to the matter sufficiently so as to come to a conclusion as to any form of agreement or procedure that may be adopted or followed in bringing about a consolidation of operations

[fol. 768] or of the facilities, particularly for the period that you refer to during this war period?

A. That is on a lease basis?

Q. On any basis outside of purchase?

A. I have not thought through a reasonable plan of lease arrangement. I am convinced, though, there should be such plan developed, but I am not in a position to recommend the terms of such a lease.

Q. Have you any reason to believe, based on anything that you have heard from any source, that the Market Street Railway would be interested in any type of leasing or consolidating agreement, outside of purchase?

A. I personally do not know of any.

Mr. Cassidy: I offer Mr. Hunter's report as the next exhibit.

Commissioner Baker: It will be received in evidence and marked as Exhibit No. 17.

Mr. Cassidy: That is all the direct examination of Mr. Hunter.

Mr. Appel: I have no questions at this time.

Mr. Cassidy: There is one minor matter, if the Commission please which has to do with a minor correction in Exhibit No. 11 introduced by Mr. Hall. Perhaps he can make the correction without taking the stand. Just take a moment.

Commissioner Baker: Exhibit No. 11?

[fol. 769] Mr. Hall: On Table No. 9 of Exhibit No. 11 I made an inexcusable error of the number of cars outbound on Market Street east of Sansome. I added the Sutter Street cars to the inside tracks instead of to the outside tracks. So, the figures, the two columns in the center of Table No. 9, the first beginning with "21" and ending with "16", should read, "24, 24, 25, 26, 22, 18 equals 146."

In the second column beginning with "14" and ending with "18" should read, "11, 6, 19, 14, 16, 16 equals 82".

I would like to have permission to correct the exhibit.

Commissioner Baker: I have indicated the correctness upon Table 9 of Exhibit No. 11.

Commissioner Craemer: Is that outbound east of Sansome?

Mr. Hall: Outbound on Market, east of Sansome. The center set of figures on Table 9.

Commissioner Baker: The record will show the correction of the errors to which Mr. Hall has called attention.

Mr. Hall: Now, those tables have also been reproduced on page 8 of Exhibit 17 at the top. So the second line on the top of page 8, which says, "4:30 to 5:30 p. m. outbound east of Sansome Street" should be "146" instead of "115" and "82" instead of "103."

Commissioner Baker: The record will show the corrections accordingly, and, further, that I have indicated the corrections in the exhibit itself, Exhibit No. 17.

Mr. Cassidy: As I understand that concludes the evidence [fol. 770] of the Transportation Department.

Mr. Appel: Is that all of the evidence on behalf of the Commission?

Mr. Cassidy: I will have to ask Mr. Hunter.

I understand that is.

Mr. Appel: Well, now, we are in this situation: We have a matter pending with reference to the wages of the platform men and the shop men before the National War Labor Board at the present time. Of course, we will not be in a position to proceed until that matter is determined in connection with that proceeding. Furthermore, due to the manpower shortage I would suggest that this matter be deferred to give us an opportunity to go over these exhibits, at least for about 60 days, with the approval of the Commission.

Commissioner Baker: Certainly you will be entitled to a reasonable time to go over the exhibits.

Mr. Appel: We have never seen any of them before today.

Commissioner Baker: That is true. Do you think it would require 60 days?

Mr. Appel: It would—at least I am satisfied it would. In the meantime we want to have a decision from the War Labor Board.

Commissioner Baker: Any other expressions of opinion?

Commissioner Clark: I do not hesitate to say that I am concerned with any delay in connection with these proceedings [fol. 771]. I do appreciate the importance of this request and it would seem that that period of time is reasonable, but I think the Commission should look upon the matter as something quite urgent and should be decided so that in granting it, if that is the opinion of the Commission, that we should insist upon the earliest possible conclusion of the case.

Commissioner Sachse: I want to say that I am in agreement with what my brother Commissioners have said, with

perhaps this thought, that if this is a long, drawn out proceeding, 60 days, the Company will later come in, we do not know how long the Company will take to put on its own case, if it puts on a case, and cross-examines the Commission witnesses, then the Commission will have to consider the Company's case, and so I see a long, drawn out proceeding ahead.

Now, in a good many, quite a number of cases of this kind the Commission has made interim orders, and I think the Commission should give very careful thought to the possibility of making an interim order here under the evidence that is before us now. By that I mean evidence where there is practically no argument that the Company's and the Commission's testimony will be the same, that would also possibly have the effect of speeding up what otherwise might be a long, drawn out proceeding.

Commissioner Clark: I would like to further ask a question of our staff, if I may. I assume you are familiar—[fol. 772] may I ask, Mr. Hunter, I assume you are familiar with the status of the situation that is referred to by counsel for the Railway as far as the War Labor Board is concerned?

Mr. Hunter: No, I can not say that I am.

Commissioner Clark: Well, we are asked to grant the extension of time partially based upon that, in fact, with that emphasized. How do we know that 60 days is going to bring about a development that will correct that picture, or, in other words, produce an answer? I am wondering if some provision, Mr. Chairman, should not be made, based upon the uncertainty of that phase of the matter, and if there is no decision at that time what will the position of the Commission be, if I may ask?

Mr. Appel: May I just add the suggestion that before the Office of Defense Transportation at the present time proceedings are pending to endeavor to improve the situation as it exists in San Francisco as far as the Market Street Railway Company are concerned, which may be in line with some of the suggestions that have been made here.

Commissioner Clark: That development would not change my opinion as previously expressed. I believe I am familiar with what is transpiring in that respect, but I am wondering Mr. Chairman, that if, when the 60 days expires, no expression comes from the War Board—War Labor Board regarding the proposed adjustment on wages, then

what will our decision properly be in fairness to the public [fol. 773] and also to the Railway Company?

Commissioner Baker: Of course, that would depend upon the will of the Commission as a whole, Mr. Clark. If, for instance—assuming this, for a moment, that we continued this case for further hearing for 60 days, approximately, upon the grounds stated by counsel, and, if then, there had been no adjustment by that time of the second matter to which counsel referred, then, of course, it would devolve upon the Commission to determine whether to grant a further extension of time or proceed by interim or proceed with the hearing.

Mr. Appel: May I add to that that we will be prepared to proceed at that time regardless of whether the War Labor Board has made its decision, because we might have to defer to that, but we won't expect a continuance indefinitely on that ground.

Commissioner Clark: If the War Labor Board should render an opinion say within 30 days would this 60-day extension still apply?

Mr. Appel: Well, I think on the manpower shortage, and in view of the length of these exhibits, as far as—yes, as far as the engineers are concerned, the shortage of men, to inspect these reports will take some time. That is really the main basis for the extension for 60 days. As I say, we have not seen these exhibits before today.

[fols. 774-777] Commissioner Clark: I move that the extension be granted, Mr. President.

Commissioner Baker: It seems to be the consensus of opinion that that is, under the circumstances, reasonable, and we will set it down for some specific date approximately 60 days from today. That would be in the neighborhood of September 13th, 14th or 15th, would it not?

Mr. Appel: Yes, sir.

Commissioner Baker: Assuming that this is correct, this calendar, the 15th of September falls on Wednesday.

Mr. Appel: Yes.

Commissioner Baker: Tuesday is our regular calendar day. On the assumption, too, that the further hearing will require more than one day it would be better to set it for, for instance, for Wednesday than for Monday and have to skip over.

Therefore, gentlemen, if there is no objection, no pertinent objection, this case, No. 4680, will be continued until

September 15th, Wednesday, at 10 A. M. for further hearing.

The Commission will now stand adjourned.

(Whereupon, at the hour of 4:45 o'clock P. M. the above matter was adjourned to Wednesday, September 15, 1943, at 10 o'clock A. M. at San Francisco.)

[fol. 778] Additional Appearances:

Mrs. Helen Negrin, in propria persona.

[fol. 779] San Francisco, Calif., Sept., 15, 1943: 10:10 O'Clock A. M.

Commissioner Havenner: The Commission will be in order. This is the time and place set for the further hearing in Case No. 4680.

Mr. Cassidy?

Mr. Cassidy: If the Commission please I understand Mrs. Helen Negrin is here this morning and desires to enter an appearance in her own behalf as a patron of the Market Street Railway and that she desires to make a statement to the Commission.

Commissioner Havenner: Do you desire to make a statement at this time?

Mrs. Negrin: Yes, make a statement at this time.

Commissioner Havenner: I think you better come forward and be sworn, please.

Mrs. Helen Negrin, a witness called on her own behalf, being first duly sworn, testified as follows:

Direct examination.

Commissioner Havenner: You have a statement you desire to make at this time?

A. I do.

Q. Will you make it, please.

A. I have, for about 3 to 5 years had trouble with transportation as we all have in the City that does not know how.

Now, my chief complaint is piling up of certain cars in succession, there is certain cars that are not routed the [fol. 780] right way, and so on. I have taken the matter up, including transfers and so on with Mr. Ryan. I have appeared before Mr. Ryan where you can make complaints,

58 Sutter Street, repeatedly. I think we hating each other's looks by this time; he has been always courteous, however I do not see any success.

There have been also smoking—non-smokers, because something I would like to mention here, too, a few other points on the one-man car situation, and I think, Mr. Havenner has fought the one-man situation years ago.

Now, I should perhaps, read an article, it is pertinent to one-man car service. First, I am now a resident of San Mateo, I lost my home in the Mount Davidson land slide, but I still have to take the Market Street cars, because of the Greyhound situation, I took the train. Now, here is one item, may I quote the San Mateo paper? "World Tour of Boy Three Ends at Daly City".

Commissioner Havenner: Is that a newspaper article that you are reading?

A. I haven't had time—I work for the Navy, Mr. Havenner, I haven't had time to cut it out, one woman blames the Market Street service, the boy could have been killed. He is a neighbor of mine, I know the people well, though.

Commissioner Havenner: Well, I think, Mrs. Negrin, you better confine your testimony here to those statements of your own.

A. How about this, could this fact be investigated, at [fol. 781] least?

Q. Well, I do not think that this is the proper time to bring that sort of matter before us. If you would like to have that investigated if you will take it up with our Transportation Department.

A. All right.

I have noticed that the 22 line, I have had repeated occasion to use it, sometimes when the cars, for some reason, pile up, we will have, in succession, cars going only to Bryant Street. Now, why can't the Market Street Railway arrange a time schedule so that alternately the cars go down to the Bethlehem, you know, down to Third Street where we can connect with the Third Street bus, for instance, to Hunter's Point or whichever way we may want to go? No, it happens that three to five cars in succession will come, have defense workers, I have seen that repeatedly, I am not the only one, mostly Union Iron workers will, that way, miss their work, or at least I don't know how Bethlehem Steel handles it; we, in the Navy Yard, get docked after we are so much late.

Same things—same thing happens with the 19 line, I have had repeatedly occasion to use that, sometimes no bus comes; then 4 to 5 come in succession. The drivers stay there at the end, I believe it is Brannan Street and refuse to move, and when you tell them something—"Oh, if you don't shut up, I will throw you out of the bus." That is the usual procedure. The signs are there, all the buses have [fol. 782] cards, "Smoking in"—practically in all of them—"Smoking in the last three seat rows only." You tell the driver to enforce the rule, well, before you know, you get into such an argument that perhaps the next day you might be ill and have to take a day off.

I am not the only one working for the defense industry, but I have noticed that from time to time come up complaints about the smoking situation in crowded buses and cars, street cars, and repeatedly on occasions I have complained to Mr. Ryan about it and no success. The drivers themselves smoke; if I say something they laugh at me; if I say it is against the rules of the Railroad Commission they laugh more. They threaten, again, to throw me out, and I have been thrown out by Greyhound, but this is a different situation, only I am not going to continuously take bromides. Now, the Hunter's Point transportation is very bad. Unfortunately, I am compelled to take a train now and Market Street Railway. The train—I take the train that gets me approximately 7—I believe 7:15, I would have to look the time table up if it is necessary. At 23rd Street if the transportation is good I can ring my clock at 20 minutes to 8, I work in the machine shop and I have to take an elevator. Fine and dandy, some days 3 to 4 buses marked "Hunter's Point" or "Visitacion Valley" will just pass us up. It has happened to me the other day again. There an officer of the Navy that worked at Hunter's Point, they left standing, and I can not punch in my clock until 8 o'clock. I have [fol. 783] not been docked yet, but I am wondering when it is going to happen, and the other day I make it only by hitching a bus two days ago, I have the transfer to the Company, perhaps if necessary it can be checked into which bus I took. I have folded them too much.

Now, I understand, of course, that we commuters down the Peninsula will, in future, get Navy buses, but in the meantime it is bad. I am not talking for myself only because after you have that service there is the San Fran-

cisco patrons, whatever you call them, of the Market Street Railway still to be contended with.

Now, Monday they rerouted the buses from Hunter's Point, we were left high and dry, missed our train, several of us.

Besides the transfer situation is that, of course, you can not help miss a transfer at the correct time because you have to wait so long, then you get in another argument with the Market Street Railway, "Tell it to Mr. Kahn", is usually the answer. I wish I would have been able to tell it to Mr. Kahn.

I am afraid it will take too long a time to quote the different cases. I think the statement of these conditions is sufficient, is it?

Commissioner Havenner: I think so.

The Witness: I have a lot of it here, I had to write it [fol. 784] down—newspapers—I haven't had the time yet. I have drivers here to give. Is it necessary I give one or two of the drivers' numbers or it is—Mr. Ryan has quite a few statements I have. I don't know if Mr. Ryan—

Commissioner Havenner: I would suggest if you have some specific complaint about the service, and a particular instance, that you call on our Transportation Department and make a complaint there and we will have it investigated. We can not investigate specific things in this hearing.

A. Well, I want just to see what could be done in this case, that is all, Mr. Havenner.

Commissioner Havenner: Is that all, Mrs. Negrin?

A. I have plenty more, but I think it is getting too detailed.

Mr. Cassidy: If the Commission please we would like to call, with the leave of counsel, Mr. Hall, in order to put in one chart which will depict certain information already now in the record, and also supplement that information.

WARD HALL, Recalled.

Direct examination:

Commissioner Havenner: You have already been sworn in this proceeding, Mr. Hall?

A. Yes.

Mr. Cassidy: Mr. Hall, have you a chart entitled, "Flow of street car and bus traffic, Market Street, San Francisco?"

A. I have, yes.

Q. Was that prepared by you or under your direction?

[fol. 785] A. It was prepared under my direction.

Q. Does that depict the peak flow of such traffic on the inner and outer tracks on Market Street?

A. It does, during the peak hour between 4:30 and 5:30 P. M.

Q. Does it also show the peak flow on lines crossing and entering into Market Street?

A. It does, yes.

Q. 4:30 to 5:30 is the peak hour of traffic?

A. Yes.

Q. The chart indicates that traffic checks were made on May 24th, 26th and 28th, 1943. Was a one hour check of each line made on each of those days or were different lines checked on different days?

A. Different lines were checked on different days. We did not have the personnel to check all the lines on the same so we spread the check over three different days covering all the lines.

Q. For that part of Market Street between the Ferry Building and Third and Kearny Streets, which set of tracks carries the larger amount of traffic?

A. The outside tracks.

Q. And what is the situation between Third and Kearny Streets and Fourth and Eddy Streets?

A. The inside track carries the heavier volume.

Q. And between Fourth and Eddy Streets and Twin Peaks Tunnel, what is the situation?

A. The outside tracks carry the heavier load.

Mr. Cassidy: I ask that the chart described by the witness be admitted as the next exhibit, Mr. Commissioner. [fol. 786] Commissioner Havenner: No objection—if there is no objection the chart just identified by Mr. Cassidy will be received in evidence and marked Exhibit No. 18.

Mr. Cassidy: That concludes Mr. Hall's redirect.

Cross-examination.

Mr. Beck: Mr. Hall, if I understand now between Sansome and First Street and the Ferry the outside tracks of

the Municipal Railway carries 115 and the Sutter Street line, Market Street Railway carries 21, a total of 136?

A: Yes, there is a total of 136 cars on the outside tracks east of where Sutter and Sansome come into Market.

Q: The inside tracks of the Market Street Railway, 68 cars?

A: Yes.

Q: Now, from Kearny Street to Eddy the outside are carrying 66?

A: Yes, and the inside 73.

Q: And the 66 can be compared with 136 carried between First and Sansome?

A: How is that question?

Q: And the 66 cars can be—on the outside volume can be compared with that 136 between First and Sansome?

A: Yes.

Q: Now, are you of the opinion that more cars could be carried on the inside tracks between Kearny and Eddy? There is only 73 there now, there is 115 between First and Sansome on the outside?

A: Well, if you can carry 115 between, say, Sansome and Geary Streets you should be able to carry more than 73 [fol. 787] on the inside tracks between Geary and Eddy.

Mr. Beck: Thank you, that is all.

Mr. Appel: I haven't any questions of Mr. Hall at this time.

Commissioner Havenner: Any questions?

Mr. Appel: Is that all, Mr. Cassidy?

Mr. Cassidy: That is all.

Mr. Appel: At this time, may it please the Commission, I would like to make a motion to strike out the testimony of H. C. Vensano, Angelo J. Rossi and Edward G. Cahill. Also Exhibits No. 8 and 9 that were offered in connection with their evidence, on the ground it is utterly immaterial to any inquiry pending before the Commission and not germane to any issue that has been presented.

Commissioner Havenner: The motion will be taken under consideration at this time.

Mr. Appel: Thank you.

Now, Mr. Cassidy has offered to stipulate in connection with Exhibit No. 2, on page 6 it shows the Market Street Railway Company comparative income statement. The

pages are not numbered, Commissioner Havenner, but it will be 6 pages from the first, that if that particular comparative income statement took into account the \$500,000 depreciation charge set up on the books of the Market Street Railway Company for those years 1938, 1939, 1940, 1941 and 1942 it would show an accumulated deficit of [fol. 788] \$326,917.66. It is just a matter of computation adding in the \$500,000 deprecation.

Mr. Cassidy: I understand, Mr. Commissioner, Mr. Fankhauser has checked those figures and is satisfied with them.

Commissioner Havenner: You are willing to stipulate?

Mr. Cassidy: Yes.

Mr. Appel: I would like to call Mr. Hunter for some questions on cross-examination.

J. G. HUNTER, Recalled.

Cross-examination:

Commissioner Havenner: You have been sworn, Mr. Hunter?

A. Yes.

Mr. Appel: Mr. Hunter, in San Francisco the street railway transportation problem is a difficult one, first because of the complicated street layout?

A. That is correct, and I so testified.

Q. Yes. And, furthermore, it is complicated because the service is divided between four interests, that is, the Market Street Railway Company, the Municipal Railway, the California Street Cable Railway and the jitneys?

A. That is correct, and I think complicates the problem of regulation.

Q. And in reference to manpower, from your information and observation manpower shortage is prevalent in every transportation agency at the present time?

A. That is my understanding.

[fol. 789] Q. You have already testified that in reference to the one-man cars, and I think in your Exhibit No. 17 you recommend that, for the duration, at least, one-man cars be put in operation, if possible, to relieve the manpower shortage. The fact is that the manpower shortage

could be relieved to a considerable extent by one-man cars for the duration, isn't that your opinion?

A. Yes.

Q. In other words, it would put more equipment on the street to start in with?

A. That was my thought that if that ordinance is suspended it should reflect in more service to the public.

Q. And, of course, service would be improved thereby?

A. I would expect so, yes.

Q. Now, in connection with one-man car operation there are certain safety factors as well, isn't that correct?

A. Yes.

Q. It reposes complete control in one man's hands?

A. One man has the control.

Q. There is no divided responsibility, in other words?

A. That is correct.

Q. And, too, on the accepted one-man car operation they have what is known as the "dead man control" that has been considered by the Railroad Commission many times?

A. That is correct.

Q. And, furthermore, with the rear step, that treadle step, if it is functioning, there is no reason for rear step [fol. 790] boarding and alighting accidents, that is correct as well, isn't it?

A. In a One-man car it does permit of exist on the rear step and there might be accidents as a result of leaving the car.

Q. Well, that would be due to some mechanical defect. I am talking about the ordinary starting cases.

A. Yes, there is no entrance except as it is controlled by one man or a ground loader.

Q. That is correct, and I was coming to that. In the matter of one man operation at heavy loading points, of course it is desirable to place ground loaders?

A. Yes, I think that should be carried out.

Q. Now, your study shows that the Municipal Railway is suffering from lack of manpower, that is, the Municipal Railway of San Francisco?

A. Yes, to same extent.

Q. And you have no assurance that they could man, and use more equipment if it were available to them, have you, Mr. Hunter?

Mr. Cassidy: Just a moment, Mr. Hunter. Have you made any investigation as to the possibilities of the Municipal Railway utilizing these cars?

A. No, other than what is shown in this record as to the cars that are not operated, I have made no further investigation.

Mr. Appel: Now, these are not normal times, are they, Mr. Hunter?

A. No, I would say not.

Q. And particularly in the street railway transportation [fol. 791] industry?

A. True.

Commissioner Sachse: What do you mean by "particularly in the street railway industry?" Why is the situation more abnormal in the street railway industry than it is, for instance, in the steam railroad industry?

A. I think it is in all industries.

Mr. Appel: And, these not being normal times, and with more riders and the manpower shortage, service is more difficult to improve at this time, isn't it?

A. It is difficult.

Q. In other words, you have to give the best service with what you have?

A. That is the object.

Q. Yes, sir. And the important thing to do is to get transportation of any kind?

A. Transportation—

Q. I am referring to that industry alone at this time.

A. Yes.

Commissioner Sachse: What do you mean when you answer "yes" to the question "transportation of any kind"? What do you mean?

A. I mean that the transportation problem today is very critical due to prevailing conditions.

Q. You do not mean, for instance, that transportation where people ride on the outside of the car or top of the car is as good as transportation where they do not have to do that sort of thing and can ride inside on the seats, do you?

A. Why, no.

Mr. Appel: May I ask you, Mr. Hunter, have you heard [fol. 792] of anybody riding on the tops of the Market Street Railway cars in San Francisco?

A. I have not seen them on the tops; I have seen them on the fenders.

Q. And I suppose you have noticed that we have a sign there prohibiting them from riding on the fenders, or have you paid any attention to that?

A. I have not seen the sign.

Q. At the present time, in respect to service, however, Mr. Hunter, the most important and valuable thing about service is to the war industries and the shipyards and others in the San Francisco area?

A. I would say that should come first.

Q. And that service, so far as you know, there has not been any complaint to the Railroad Commission from the war industries or the shipyards in respect to that service?

A. No. And I might say that only yesterday I talked to Commander Jenkins, who is in this room, and he indicated that so far as the Navy is concerned he felt that, in connection with negotiations with the Market Street Railway, every reasonable effort was being made to take care of the Navy requirements.

Q. Mr. Hunter, in reference to modernization, the Market Street Railway had inaugurated and was carrying out a plan of modernization by acquiring and putting into operation modern motor coaches before Pearl Harbor, that is, December 7, 1941?

A. Yes, they began their use of motor coaches I think [fol. 793] several years before Pearl Harbor.

Q. And also trolley coaches prior to that time?

A. Yes, on one line.

Q. Yes. Now, are you familiar with the interim opinion that was rendered by the Railroad Commission in the matter of the application of the California Street Cable Railway Company for an order of the Railroad Commission of the State of California authorizing increases of fares? The decision is No. 35,753 and it is Application No. 24,456. In a general way are you familiar with that?

A. In a general way, yes.

Q. And in that decision the Railroad Commission, in reference to this modernization, stated as follows—I am reading from the decision, may the Commission please:

“In this same respect the record contains considerable discussion relating to the substitution by Market Street Railway Company of motor coaches for rail cars on its Sacramento Street Cable line. The exercise of foresight by that Company, in meeting changing conditions and decreased revenues by substituting transportation facilities that are less costly to operate, might also have been followed by applicant herein if it had been interested in effecting the greatest degree of profit commensurate with reasonable service and low fares.”

Do you recall that statement in that decision?

A. Yes, I do.

[fol. 794] Q. Now, in connection with recommendation No. 7 of your Exhibit No. 17—have you got that handy, please, Mr. Hunter?

A. Yes, I have.

Q. Let me ask you, Mr. Hunter, at the time that you compiled that exhibit whether or not you were familiar or considered the supplemental indenture of the Market Street Railway Company?

A. No, I did not.

Mr. Appel: While this is a copy there is an authenticated copy on file with the Commission, but I would like to offer it in evidence at this time as an exhibit on behalf of the Market Street Railway Company.

Commissioner Havenner: No objection, the document consisting of 7 pages and two cover sheets entitled, “Supplemental indenture Market Street Railway Company and Wells Fargo Bank and Union Trust Company, Trustee, dated April 1, 1940,” will be received in evidence and marked Exhibit No. 19.

Mr. Appel: This supplemental indenture, of course, is supplemental to the original indenture or first mortgage that secures the outstanding bonds of the Market Street Railway Company and, with the permission of the Commission, I would like to read from page 4, paragraphs numbered 9, 10, 11, 12 and 13.

Paragraph 9 reads as follows—by the way, all of the terms of the original indenture, first mortgage, are incor-

porated herein by reference; this is just supplemental [fol. 795] to it:

"The Company covenants and agrees not to make any payment on account of principal or interest on its indebtedness to Standard Gas & Electric Company existing on March 30, 1940, until the Bonds shall have been paid in full, and interest on said indebtedness shall accrue at not more than 4 per cent per annum."

Paragraph No. 10: "The Company covenants and agrees not to make any principal payments on its bank loans existing on March 30, 1940, except after the Bond Sinking Fund payments have been made as they become currently due, and then only to an amount equal to 2 per cent of the principal of said loans annually, except as provided in paragraph (11) hereof."

Paragraph 11: "The Company covenants and agrees that after meeting Sinking Fund provisions, as above provided, to use its remaining cash only for capital expenditures and working capital, and any amount over and above such reasonable requirements shall be used as an additional sinking fund for the Bonds and bank loans pro-rata to the principal amount of each."

"(12) The Company covenants that it will duly and punctually pay the principal of and interest on the Bonds, as extended, on the dates and at the places and in the manner provided in said Bonds, as extended, and in the coupons appertaining, according to the true intent and meaning thereof."

Paragraph No. 13: That the Indenture and all the terms, conditions, covenants, promises and agreements thereof and rights and remedies therein provided, except as modified hereunder, shall be and remain in full force and effect for the benefit of, and shall apply to, the holders of the Bonds, as extended, and coupons appertaining, and in the event the Company shall make a default in any of its agreements hereunder, said default shall be deemed to be included within the appropriate subdivision of the 'Events of Default' referred to in Section 47 of Article Seven of the Indenture, and shall constitute an event of default under said Indenture."

Now, Mr. Hunter, when, in recommendation No. 7 on page 11 of Exhibit No. 17 you said that the Market Street Rail-

way Company should place in a special fund its gross revenues, less the amounts necessary to defray certain expenses at that time, did you have in mind that some of the money might be used for the payment of dividends on stock?

A. Yes.

Q. And, of course, with the supplemental indenture before you, and provision 11 that I have just read therefrom, you can see that no payments can be made in reference to dividends on stock until the obligations of the indenture and the supplemental indenture are taken care of?

A. That appears from what—I am not familiar with this [fol. 797] document that you are reading.

Q. I understand, that is why I read that part.

A. Yes.

Commissioner Sachse: May I interrupt there for a question?

Mr. Appel: Certainly. I am through.

Commissioner Sachse: Mr. Hunter, in looking at the suggestions on page 11, and now in view of your attention having been called to the provisions of the supplemental indenture, is it your understanding that the item operating expenses, exclusive of depreciation, in No. 7 on page 11 of Exhibit 17, has precedence over any fixed charges or any provisions of the bond indenture or any supplemental indenture, or is it your idea that the bond provisions are ahead of the absolutely necessary requirements to render efficient and safe and good service?

A. I would view that it—it would be my view that the operating expenses come first.

Mr. Appel: I haven't any further questions of Mr. Hunter.

Mr. Beck: I have a question of Mr. Hunter.

Q. Mr. Hunter, one-man car operation, have you ridden very many one-man cars?

A. Oh, I have ridden them in different cities, yes.

Q. The treadle step on the one-man car is in the rear, is it not?

A. Yes, usually; in the PCC cars they are in the center. [fol. 798] Q. How wide a space is there at the opening there for the treadle step for people to get out?

A. Oh, I haven't the dimensions here. It is wide enough for one aisle, one lane of traffic.

Q. In a crowded street car where the operator is doing all he can to load people at the front of the car isn't it pos-

sible for a man to stand inside the car and on the treadle step and allow everybody that cares to to move in there free?

A. That is actually being done in some cases. It has been called to our attention and we, in turn, have called it to the attention of the carriers.

Commissioner Havenner: May I ask—I intended to ask counsel for the Company also—what is the purpose of this questioning about one-man car operation in this proceeding? Am I correct in believing that one-man car operation is forbidden by law in San Francisco?

Mr. Beck: It is, sir.

Mr. Appel: That is correct, but I can add—augment that further, that in Exhibit 17 one of the recommendations applied to one-man car operation to relieve the present man-power shortage.

Commissioner Havenner: That is the opinion, I believe, of the engineer who reported—who prepared that exhibit, yes.

Mr. Appel: Yes, that is correct.

Commissioner Havenner: It has been received in evidence [fol. 799]—dence, but I am just wondering whether it is contended here that this Commission would have any authority to bring about one man operation in San Francisco.

Mr. Appel: We are not making that contention.

Commissioner Havenner: Just what is the purpose of all this questioning at this time?

Mr. Appel: In respect only to the exhibit.

Commissioner Havenner: The exhibit, of course, is merely an exhibit prepared by our engineering staff and does not represent any conclusion of the Commission at this time.

Mr. Appel: But it pertains to this exhibit, Mr. Commissioner Havenner. It pertains to the matter of the man-power shortage and the possibility of relief from the man-power shortage giving additional transportation.

Mr. Beck: Well, I do not see how you can get any relief from one-man car operation when you can not use one-man car operation in San Francisco. That is the law. I am going to ask that all the questions asked about one-man car operation be stricken.

Commissioner Havenner: That motion will also be taken under consideration. Proceed, Mr. Beck, I did not want to

stop your line of questions, but I was going to ask counsel on the other side also what was the purpose of these questions.

Mr. Beck: Since I have taken exception to the questions asked by counsel and asked that they be stricken I think I will desist from asking any more questions.

[fol. 800] Commissioner Sachse: I would like to ask Mr. Hunter a question on that same subject, in view of your recommendations made in the report and in view of the questions asked by counsel. As I understood you in your answer to counsel you said that the manpower shortage might be relieved or would be relieved if one-man car operation could be instituted in San Francisco. That was your testimony?

A. With certain restrictions.

Q. Very well. Now, in some cities—I have Los Angeles in mind—there is one-man car operation to a certain extent?

A. That is true.

Q. On the Los Angeles Railway?

A. Yes, a number of lines.

Q. Have they got a manpower shortage there?

A. Yes.

Q. Notwithstanding the fact that they have one-man car operation?

A. That is true.

Q. Would you say that the manpower shortage on the Los Angeles Railway, in so far as one-man car operation is concerned, is less severe than in San Francisco on the Market Street Railway particularly?

A. I think our records show that the manpower situation is slightly greater on the Market.

Q. Well, do you think that is because of the one-man car operation compared with two-man car operation, or is it for other reasons?

A. Well, there are many reasons that might pertain. I [fol. 801] would say this, in connection with the one-man car proposal, it is calling attention to the fact that by operating certain lines with one man it would permit of putting more cars on the street. That is my only thought.

Q. You then qualify it a little bit. Of course, it is obvious that if the same number of men remained available for one-man car operation that are now available for two-man car operation that you could operate more cars. But is there anything to show in your experience anywhere that street

railway motor men and street railway conductors or one-man operators are more likely to stay with their job in this wartime under one car operation or under two-man car operation?

A. I have nothing to show.

Mr. Beck: I think, Mr. Havenner, I should point out the Board of Supervisors just a short time ago, a few days ago, by a 9 to 2 vote, requested the Market Street Railway to desist from trying to get one-man car operation in San Francisco. Will you stipulate to that?

Mr. Appel: Whatever the proceeding was that took place before the Board of Supervisors I will stipulate to, but I do not think it is so much in issue here. We only asked that it be submitted to the people; they did not want to have the people pass upon it.

Mr. Beck: I am just pointing out the Board of Supervisors refused to submit it to the people and have asked the Market Street Railway to desist from any more attempts [fol. 802] to get one man cars.

Mr. Appel: Mr. Beck, you know they refused to submit it to the people. The people are the ones we want to pass upon it, they have the say.

Commissioner Sachse: Now, I would like to ask Mr. Hunter one or two more questions.

Commissioner Havenner: Is all this testimony valuable only if it can be submitted to the people?

Mr. Appel: No, it is in the matter of service, if you please, that this manpower shortage has become so apparent to the engineers of the Commission and as we are conscious of it in the operation, we are all trying to find a way out.

Commissioner Sachse: On the question of service, Mr. Hunter, in your opinion, is the service now rendered by Market Street Railway in San Francisco or worse or approximately the same quality and character of service as it was during the 5-cent fare era prior to the war emergency?

A. I think the service is worse now.

Q. In your opinion should the cost of the service that the public is to pay, must pay, have some relation to the quality of service that is rendered, in so far as the public is helpless beyond its control to get better service for the same amount of money that they pay?

A. Yes, that is covered in my recommendation No. 6.

Q. Will you enlarge a little bit on that? That No. 6, reads as follows: "The value of the service should be in keeping [fol. 803] with the rates."

And I would like to have you keep in mind my thought on that so that you can give your answer with that in mind. Assuming that it is beyond the control — the Company to give as good service as it did some time ago do you think that, even under those circumstances, the public should pay the same or more than they formerly paid for a superior quality of goods or service, other things being equal?

A. I think the service should go along with the rates.

Commissioner Havenner: Do you mean by that when the standard of service decreases rates should be commensurately decreased, if that can be calculated?

A. Of course, the service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one. But, obviously, as the service declines that should be recognized in establishing any rate, but to determine just what a rate should be on a particular service, you could not do it without considering all the other elements that go in. There are many.

Commissioner Sachse: That is all I have.

Mr. Appel: May I ask another question—did you have a question, Commissioner Baker?

Commissioner Baker: Yes.

Q. Mr. Hunter, you testified, if I understand, that the service of the Market Street Railway Company, in your opinion, is worse than it was when they operated on the [fol. 804] 5-cent fare basis?

A. That is correct.

Q. Do you attribute the difference in the service, that is, the decreased efficiency of service to the fact that there was a change from a 5-cent to a 7-cent fare?

A. No, I attribute it to the manpower shortage.

Q. In other words, no causal relationship between the present quality of the service and the fact that the Company went from a 5-cent basis to a 7-cent, no causal relationship?

A. There might be a somewhat related factor in the headways. As the fare is increased—the fare was increased the headways, I think, were lengthened out a little so it would have that effect. But, as far as the riding capacity of the

cars offered, I do not remember that to be any worse after the 7 cents than with the 5.

Commissioner Sachse: On that point, Mr. Beck, this record shows, doesn't it, Mr. Hunter, that immediately after the increase in the fare business dropped off to a very considerable extent and that the service then was adjusted by the Company with the requirements in accordance with the requirements of the reduced traffic?

A. Yes, that is my memory.

Mr. Beck: I believe you asked the question I was going to ask. In other words, value of service, as I understand you, is based on headway, is that it?

A. Headway is one thing that goes to make service, capacity, availability of the seats, type of equipment. There [fol. 805] are other things that go in with service.

Commissioner Sachse: One other question. Now, was service in any other respects improved by reason of the 7-cent fare taking effect? Was there better equipment or any improvement in the service instituted after the increase in fare?

A. Not in the way of equipment except I might say I do not know how the bus facilities entered in at that time. I do not understand it was because of the fare change they got more buses. To consider the whole picture there you would have to trace through and see whether they did get new buses at that time. I do not remember that they did, but of street cars, no.

Mr. Beck: If the value of service under the 5-cent fare was greater than it is now is it your opinion that the fare now should be below 5 cents?

A. I think, Mr. Beck, in figuring fares you will have to consider all of the elements. I could not answer that question, I would not say that because the service was poorer now than when they had the 5 cents the present fare should be less than 5 cents. There might be many other elements to consider.

Q. In other words, value of service is a very hard thing to evaluate?

A. That is correct.

Mr. Beck: That is all.

Commissioner Havenner: Do you know how much idle equipment the Company has in its possession at this time?

A. We have that in the record, Mr. Commissioner Haven- [fol. 806] ner, as of the date of our last report there. It runs around something less than a hundred cars that are ready to go if they had the manpower to run them. I remember that figure and it does show in the records, but there are a substantial number of cars that are ready to be put in service if they were—

Q. You mean ready to go, you mean open at both ends and equipped for two-man operation?

A. Yes.

Q. How much other equipment that is in running condition is in possession of this Company now and not in operation?

A. We have those records here. The degree of maintenance or work to be performed on them varies considerably, but I think you could start with a hundred cars with very little work and if you wanted to go into major repairs you could get a hundred more, and then there is some that are beyond any reasonable repair.

Q. What type of cars are you referring to now?

A. I am referring to their standard cars, some of them—they have about 135 that are equipped for one-man operation, but they are run by two men—they can be run by one or two men, but the system is a hundred per cent two man, as you know, except I did read where they were going to change that one down at San Mateo to one man. I do not know whether that has been effected or not.

Q. Well, these one man type of cars, you say they can now be operated by two men without any alteration?

[fol. 807] A. That is, they are being operated by two men.

Q. Are a great many of those cars now in idleness?

A. I do not know just how it divides, there may be some. But these cars that were fixed for one man operation are the standard two man cars and when they were prevented from running them with one man they put them back to two men, they go right in the fleet with the rest, just the same as the other cars, except they have the—

Q. I thought that you meant at the outset to say that a number of these cars were in idleness because certain alterations or repairs had not been made upon them, alternations particularly. What kind of alterations did you have in mind?

A. Well, they vary all the way from truck repairs to body repairs and windows, seats. It has nothing to do with one man operation.

Q. That is, all the one-man type cars could be put into operation at this time with two men without any alterations, is that right?

A. I think so. I would want to be corrected by the management here if I am mistaken, but that is my understanding, one man operation has nothing to do with what I have said about equipment.

Q. You estimated there were a hundred such cars that could be put into operation at this time?

A. Yes.

Q. What, in your judgment, is the reason why they are not being operated at this time?

A. Manpower shortage.

Q. Solely manpower shortage?

[fol. 808] A. Yes, for a good portion of them. It may not be for all, every one of them, but a good portion of them.

Q. If those 100 cars to which you referred could be put into operation at this time could you give the Commission your opinion of the amount of improvement in the service that would be accomplished by the operation of those 100 cars in addition to what is being operated now?

A. Oh, that would have a material effect on the service on these lines. They could provide quite a few cars on each line to take care of their peak loads and it would be desirable and, I think, justified.

Q. Have you investigated the manpower problem on the railroad to the extent of determining whether they are now using every platform man or woman who is on their payroll regularly?

A. Yes. We have visited the divisions and talked with the Company; that has been the extent of our investigation. It is my understanding, and coupled up with the fact that they are advertising and trying every way to get people, I would assume that they are using every one that is available.

Q. Have your investigations enabled you to reach a conclusion as to why they can not get more platform operators?

A. Well, I think one of the main things is the wage situation.

Q. The wages they are paying are not sufficient to attract people to that work, is that right?

[fol. 809] A. I will have to explain just a little my answer there. I think it is true that practically every industry is short of manpower. Now, those where the wages are lower that shortage, I think, is more severe, and I think this is a case where they have lost many employees to industries that pay higher wages and it is difficult to attract new people to a business where the wage is low and they can go somewhere else and get materially higher wages. I think that they are in that class.

Q. This Commission, of course, has no authority to regulate wages, but have your studies been of such nature as to enable you to say whether or not street car companies elsewhere in the country have been able, by offering any inducements in wages, to operate more successfully than these companies—than this Company for instance, is able to operate during the war emergency? In other words, do you know whether there are any instances in the United States or elsewhere where special inducements in wages are being offered to get operators during this emergency period?

A. Yes, right here in San Francisco the Municipal line, they have recently increased their wages, particularly for the training of new employees. That has—that is one thing that is quite a barrier to getting people interested in this business is the fact that the starting wage is so low and a comparatively long period of time.

In Los Angeles, there the National War Labor Board is now conducting investigations to determine whether or not [fol. 810] there should not be an adjustment in the wages paid by the Los Angeles Railway, particularly, as well as San Diego and Bay Cities, realizing that the manpower shortage there is severe and very critical. And they have send a special committee out from Washington to investigate that and see if they can not bring about some adjustment whereby they will at least hold their present staff from deserting that service and going to higher paid businesses.

Q. What I had in mind was have you heard, in your studies, of any transportation company operating within a

city, street transportation service, that has devised any system of paying, say, bonuses out of the excess earnings that all these companies are making during the war period in order to get and hold employees during this emergency period?

A. I have heard of them making concessions; I have not heard of them making that particular one, bonus feature. As I say, the City of San Francisco is one where they have been—increased their wages; they have their vacations and sick benefits and higher wages for starting and that sort of thing and it is all aimed to attract people to that business.

Commissioner Havenner: Mr. Beck, could the City make a witness available who could put into this record what has been done as referred to by Mr. Hunter?

Mr. Beck: Certainly we can.

Commissioner Havenner: I wish you would. Could you [fol. 811] have somebody here this afternoon?

Mr. Beck: Try to have them here this afternoon. In other words, as I understand, you are asking for what the scale of pay is and the basis?

Commissioner Havenner: I want to know what readjustments of pay and compensation have been recently offered by the City in order to attract and hold street car operators.

Mr. Beck: We will have a witness here.

Q. Mr. Hunter, do you know whether the manpower shortage on the Municipal Railway is as serious as it is on the Market Street line?

A. Our records show it is not.

Q. Do you know whether or not the City of San Francisco practices any racial discrimination in hiring platform men on the Municipal Railway?

A. No, from my observation they do not.

Q. Does the Market Street Railway practice racial discrimination?

Mr. Appel: I object to that on the ground it is, first, an opinion and conclusion and no proper foundation laid.

Mr. Beck: Does the Market Street line hire any Negroes?

A. I have never seen or heard of any.

Mr. Beck: That is all.

Commissioner Havenner: Take a recess at this time. (Recess.) The Commission will be in order.

Mr. Beck: If the Commission please we will have a representative from the City of San Francisco here at 3 [fol. 812] o'clock this afternoon, the Manager of the Utilities, Mr. Cahill will be over.

The Witness: Commissioner Havenner, I would like to add just a little to the answer I gave as to the equipment.

When I said there was a hundred cars ready to go, that includes those in storage and those in the various barns that are not out on the road. Now, as to storage those are the ones that are set aside there, they have 56 good cars. Those are all 2-man cars, ready—some minor work, but you would call them serviceable condition; there is 14 of the one-man type in storage that does need a little work to put them in condition for two men operation; they have 12 cable cars in storage which could not be considered available for service due to the fact of their condition, and I think the size of them. But that, generally, rounds out the the situation with respect to available equipment.

Commissioner Havenner: How about buses?

A. I think aside from the buses going through the shops they are generally in service. Our check on that is not right recent, but, as I remember the figures, most of the buses are put in service. Their buses are comparatively new so I would not think they would have very many of them that would be considered as becoming obsolete for the service.

Commissioner Sachse: Right on that point may I ask, Mr. Hall, does that correspond with the latest figures you have about the buses, that substantially all the buses are [fol. 813] in service?

Mr. Hall: As shown by Exhibit 5 the buses are all in service or going through the shop for minor repairs with the exception of one bus, that is a General Motors bus built in 1932 and that is in Civilian Defense work.

Commissioner Sachse: I noticed you had the data there and Mr. Hunter was speaking from memory.

Q. Mr. Hunter, I would like to ask you one or two more questions on this manpower situation. There is one thing about that shortage of men that is, to my mind, very peculiar and perhaps you can put some light on it. Here is a Company, we will say, that needs a thousand men and normally it draws on a certain labor market, we will say San Francisco. It is able to get, we will say, under present

conditions 800, and then the shortage starts and they do not seem to be able to get the thousand, but they can get the 800.

Now, there is another Company that needs 2000 men or 500 men; they can not get 2000, but they can get more than a thousand, they can get 1800 or 1700; when they get up to that point the shortage commences, they do not seem to get any more and the one that only needs 500, they can not get the 500, and on the California, to go from the theoretical into the actual, that need not nearly as many, they can get only up to a certain number up to this available labor market.

[fol. 814] Now, have you any reason, have you any explanation for that peculiar fact that no matter what the total requirement is, whether it is a large number, a very large number, or a smaller number, beyond a certain point they do not seem to be able to get the men. Why is that?

A. Well, of course, there is reflected in the manpower situation the number of people that leave, and I think in any business men become—and women become attached to a company and there is a certain percentage of them that stay on with it. Now, I do not know whether your question anticipates an entirely new industry springing up and looking at the field—

Q. No, I mean transportation industries.

A. Well, I would say that—

Q. Street car companies.

A. Take these three companies in San Francisco here, the California and the Market and the Municipal, many people employed there would stay there even though they could get higher wages some place else, and I think it is that sort of back log of people who are satisfied to stay that sort of saves a comparatively high percentage in each case. Bringing in new ones, that is where your difficulty comes, to get people to come new to a business like a street car company when there are so many more attractive offers in the labor market.

Q. Then, why is it that, for instance, on the Municipal that the difference between the number of men that are [fol. 815] needed to give full service, we will say, and what they actually can do, is much smaller, the margin is smaller between what is needed and what they have than on the,

we will say, the Market Street Railway or some of the other street railways?

A. I think that can be accounted for in large degree, at least, in the fact that they have civil service, sick benefits, and wages a little higher and the working conditions and the like of that. It is that that they hold their people to a greater extent than the Market.

Q. In other words, working conditions and wages are better in one case than in the other?

A. Yes.

Q. Do you think that the fact that from the earning position, from the net earning position of the Company, the greatest net earnings can be secured at a certain point of labor shortage has something to do with it?

A. Oh, yes, that is an element.

Commissioner Clark: May I ask do you know any one of these railways in the State of California, including the Market Street Railway, that are not able to retain and procure sufficient employees to make their earnings higher than ever before in the history of the business?

A. I think they are higher now than they ever were.

Q. And they have been successful in keeping employees and getting enough new employees so that the net result of their operations is that they are making more money than they have ever made before?

[fol. 816] A. The net is higher, but the service is down.

Q. I am speaking of the net earnings.

A. Yes.

Q. In other words, that would indicate, then, in your opinion, that their ability to get employees results in the highest earnings, but interferes with the efficiency of the service?

A. Yes, that generally goes along.

Commissioner Havenner: Referring back to Mr. Sachse's question, have you an opinion as to the point in the total number of employees needed where net earnings would be higher than if they had the total number of employees required to operate the service to 100 per cent efficiency?

A. In the case of transportation—

Q. I did not put that question very clearly, but I understood Mr. Sachse to say—you know what he said, what he asked—whether there was some point along the line of

complete employment where net earnings would be higher than if they had the complete employment.

A. In the case of transportation now, where people ride of necessity, they will put up with the service that is offered. Now, obviously, if you make the headway 5 minutes on a line that had been 3 minutes you will carry the greater portion of those people, but you won't be put to that expense. Carrying that to the extreme I do not know how far you could go where people just would not, and you would have your overheads that would catch up with it.

Q. I was wondering whether some efficiency expert had [fol. 817] estimated the place in the line of complete employment where the greatest amount of profit could be earned?

A. Net?

Q. Yes, net profit.

Commissioner Sachse: I, of course, am not a witness, I am not on the witness stand, but I think I might say that the greatest profit will be earned where the maximum gross revenue can be secured at the lowest operating cost, at the minimum of operating cost. In other words, if the worst possible service which, of course, the Company will have to pay for an operating expense that will produce the greatest gross revenue will give the greatest net. Now, it seems to me there is no question on that.

Commissioner Havenner: How do they know what that point is? That is what I was wondering. I was wondering whether any of these mathematical geniuses had arrived at a conclusion which would enable any company to say, "With so many employees and under such and such headway we can earn the maximum net profit"?

A. There is that situation, very true, Mr. Havenner. I think, though, you could not actually figure, it would be an estimate; how close you could get to it I do not know. But, as Mr. Sachse points out, it is that greatest difference you can get between operating expenses and the gross.

Mr. Kahn: Mr. Sachse, isn't that discussion with respect to that point you brought up purely academic and has no [fol. 818] bearing on the case before this Commission?

It assumes that the Market Street is trying to keep its employees at a certain level when every one knows that is not the fact, that it is turning Heaven and earth to get more employees. It is giving bonuses to its workers who bring in new employees, it is doing everything reasonable

that every one else is doing to get employees. The payrolls in all our transportation companies are down, we all know that, otherwise they would not be advertising for men. What is the reason for it? Each transportation company has certain of its employees that are of the draft age or have volunteered as soldiers or sailors or marines and naturally that will reduce the ranks of employees of every employer of labor, and if we did not have eight or ten million in the armed forces our quota of employees would be full as well as the rest of the others.

Commisioner Sachse: Well, Mr. Kahn, I would be very glad to make my own views quite clear.

In the first place I do not believe that it is at all theoretical, this discussion, I think it is very practical and directly in point in this case, and in my opinion it is one of the most important concrete elements in the case. That it is not theoretical is in the record; we have the fact, that, for instance, right here in San Francisco, with the same labor market to draw from, we have two competing transportation companies, one Municipal and the other your Company, the [fol. 819] Market Street. The Municipal needs a hundred per cent employees, but can not get quite the hundred per cent, but get up to a certain percentage compared with a hundred. I do not know what it is, but let us suppose it is 90 or 95. You need a certain number of employees, a hundred per cent, but, you do not get up that high, you get only up to 75 or whatever the percentage may be.

Now, what I am addressing myself to, and it certainly — concrete and not theoretical, is this difference between your Company not being able to get nearly as close to the hundred per cent service as far as manpower goes; I am not talking about anything else now, and the Municipal gets much nearer to 100 per cent service, and I think Mr. Hunter has testified as to why that is, in part, at least.

Mr. Kahn: Well, I do not know whether those figures that you have before you relate to the actual employees before and after war conditions or to the number of runs of the Municipal Railway and the Market Street Railway respectively.

Of course, the Municipal Railway—I am not sworn as a witness yet, but I presume you will take my remarks at par—the Municipal Railway has some advantages that the Market Street has not, one of them being there are no re-

strictions on the number of hours that the women who are employed by the Municipal Railway work. With us we are limited by State regulation. Now, if those—if the Market Street Company were not subject to those restrictions we [fol. 820] would lose fewer runs than we do at the present time.

Commissioner Clark: In what manner are you restricted in relation to the women employees?

Mr. Kahn: We can work our women employees not to exceed 54 hours a week.

Commissioner Clark: And the Municipal Railway, can it work their women in excess of 54 hours a week?

Mr. Kahn: That is my understanding.

Commissioner Clark: You do not know? You mean that is your understanding, but you are not sure, is that the fact?

Mr. Kahn: I have been given the information as a fact.

Commissioner Havenner: Your restriction is the State law, is it?

Mr. Appel: Yes, the Department of Industrial Relations, Division of Industrial Welfare of the Department of Industrial Relations.

Commissioner Havenner: Would the State law make any differential between the employees of a private company and the employees of a municipality?

Mr. Appel: The City takes that position, Mr. Havenner.

Commissioner Havenner: That is something I would like to ask the witness about, if he can be prepared to answer that.

Mr. Beck: I will speak to him, tell him to have an answer for you. Whether or not—the question is whether we work them over 54 hours?

Commissioner Havenner: Whether they can work them [fol. 821] over the restriction imposed by the State law or the Industrial Relations Commission or whoever is in charge there.

Mr. Beck: The answer to the question would be if he does work them over 54 hours a week he can work them over 54 hours a week.

Commissioner Havenner: Maybe, I am not sure about that.

Mr. Kahn, I would like to ask you this, have your Research Engineers ever arrived at any formula for efficient service expressed in terms of street car capacity and head-

way? Have they worked out for you any standard of efficient service for a given number of people in units of street cars and headways?

Mr. Kahn: Why, that problem is approached just in that fashion. We are making constant studies of traffic and traffic conditions and we try to fit our street cars and buses to meet the best needs of the people.

Commissioner Havenner: You have no standard formula for saying that in a city of a hundred thousand population and a certain area you can give standard, efficient service, with so many street cars and such and such a headway?

Mr. Kahn: Why, I never heard it expressed just in that way, but I can only speak generally for the—I only speak specifically for our Company and I think I can speak generally for the transit industry that it tries to fit its facilities to best suit the needs of the people and those studies are being made constantly both by the men in the field and [fol. 822] our Time Table Department.

Commissioner Sachse: Right on that point—first, may I ask, do you propose to take the stand in this proceeding?

Mr. Kahn: Yes.

Commissioner Sachse: But, on this point that Commissioner Havenner made there is a more definite standard, however, accepted by the industry as a whole, and that is the occupancy standard of street cars that are operating under given conditions. In other words, if a point is reached during the peak hour, which is the test period, that more than a certain percentage of the seating capacity have to stand then this standard of reasonably good service is not met. That is true, isn't it? That is the general standard, isn't it?

Mr. Kahn: Well, I think that has to be qualified a bit because the, you might say, curse of the street railway business is the evening peak. People have been coming from residential districts into the business districts during the entire day. There is a morning peak when people who come to their offices or places of business come to town; that is spread over—or to, I might add, to shops or any other place of employment—that is normally spread over a period of, you might say, two hours, at least an hour and a half. But the evening peak involves the travel in the opposite direction of practically that entire crowd of street car patrons who come from their homes, leave their homes to go [fol. 823] to other districts in the morning over a peak, say,

of an hour and a half, to be conservative. They travel in the opposite direction in a much shorter period of time and, therefore, I do not believe there is any street railway that I know of that has the equipment to comfortably seat those people going home during the evening peak. Now, I do not care whether it is San Francisco or New York or Los Angeles or Paducah, Kentucky.

Commissioner Sachse: Well, I was not speaking of what they actually did or what they could do, I was speaking about standards of service, and I addressed this question to Mr. Hunter because I know he can answer it. You heard what I asked about there being an available standard of service to measure the service to simply say whether it comes up to a standard that is considered reasonable, is better than that or that is below it. Now, in the City of Los Angeles, for instance, the City prescribes a set of standards, doesn't it?

A. Yes.

Q. Will you state for the record what those standards are? I am not talking about whether they are met or not but what the standards are.

A. I think the standards there—however, this is from memory and it has been some time since I heard it—is 175 per cent of the seating capacity and a 25-minute stand. In other words, they limit the number of people that can get on the car and limit the length of time that any passenger has to stand. Now, if your cars do not meet that in accord-[fol. 824] ance with the City's—I guess the rule of the Board of Public Utilities and Transportation there, you are expected to put on more cars and I am not positive that it is less than twice the capacity, I am quite sure of the 25 minutes.

Commissioner Havenner: Has any such standard ever been established in San Francisco by any authority to your knowledge?

A. Not to my knowledge.

Mr. Beck: Don't you think that the real standard of service is that everybody should have a seat and there should be a street car there when any one wants them, is that not a good standard of service?

A. No.

Mr. Appel: I think that is absolutely immaterial, and it is an improper question and unreasonable.

Commissioner Clark: May I ask, to your knowledge, has the Railroad Commission, through its staff, made any check to determine to what extent the standard that you refer to is being complied with or violated?

A. In Los Angeles or here?

Q. Here in San Francisco?

A. Well, first, the rule is not in effect here, but our studies show that it is not being complied with by quite a wide margin now.

Q. Have you any facts or figures to indicate whether or not, conditions as they are now being experienced by those who are dependent upon street cars are entirely unreasonable in that respect?

A. Normal times, I would say "yes" they are unreasonable [fol. 825] in normal times. But, of course, war times you have to put up with things that you just can not better. But for normal times I would say that this service is unreasonably bad.

Commissioner Havenner: Any further questions?

Mr. Appel: With your permission.

Q. In other words, Mr. Hunter, service is not anywhere up to pre-war standards at the present time in the street railway transportation industry, is it?

A. As far as I know it is nowhere being offered the public and I think that is quite true all over.

Q. And the main object at the present time is to comply with the directives of the United States Government and give service to war industries, isn't that correct?

A. That is correct.

Q. And even at the expense of other members of the traveling public?

A. The war activities come first.

Q. Yes, sir. Now, do you know —

Commissioner Clark: Pardon me, could I interrupt?

Has the Market Street Railway Company any evidence of that fact? Do you mean that is your effort, that is, a move is being made in that direction by your Company?

Mr. Appel: Absolutely, we are complying with all of the directives, giving them first consideration.

Commissioner Clark: To what extent are you favoring war workers as compared with others?

[fol. 826] Mr. Appel: Giving them the maximum service required by the industry and the shipyards.

Commissioner Clark: Maximum service required?

Mr. Appel: Yes.

Commissioner Clark: You are not insisting on any priority arrangement under which the shipyard worker, for example, would ride on a street car, replacing a civilian who was not a war worker?

Mr. Appel: No, they do not go to that extreme.

Commissioner Clark: To what extent do you go?

Mr. Appel: To give the service that is required as it is needed to the shipyards and industries, and we will offer proof on that at the proper time.

Q. Are you aware of the fact that the Municipal Railway is not subject to the jurisdiction of the War Labor Board in this matter of wages?

A. I am personally not familiar with it.

Q. You are not. You do know, however, that the War Labor Board has under consideration at the present time the matter of the wages of the Market Street Railway employees?

A. Yes, I was so advised in Los Angeles last week by the Board out from Washington, the Chairman made that statement.

Q. Do you agree, Mr. Hunter, that the average street car fare throughout the United States is in excess of 8 cents?

A. Yes, throughout the United States.

Q. That is in cities where there is no competition in the [fol. 827] matter of street car operation?

A. Yes, that includes all the larger cities.

Commissioner Clark: Could I ask a question there?

Mr. Hunter, noticing your answer to that question, per passenger per mile how does the Market Street Railway here in San Francisco compare with other cities throughout the United States?

A. Passengers carried per mile?

Q. Per passenger per mile.

A. Market Street has a very high carrying capacity per mile.

Q. Do you know of any company that has a higher cost per mile, passenger per mile in any metropolitan city in the United States?

A. Let me understand, did you say cost or capacity?

Q. Cost to the passenger, per passenger per mile. Your answer to the question was an 8-cent fare that was asked. I am asking you now if you know of any city railway, any railway, street railway of any metropolitan city in the United States that has a higher cost per passenger mile than is paid by those using the Market Street Railway in San Francisco?

Commissioner Sachse: If you will permit me, Mr. Clark, that has reference to the average haul. In other words, what is the average haul that a passenger in San Francisco gets for 7 cents?

Commissioner Clark: That is right.

The Witness: Well, I am not prepared to answer that [fol. 828] question. Of course, to seek that information you would take the average haul here with the average haul in other cities and compare the fares. Now, the average fare is over 8 cents, the average length of haul I do not know. That can be determined.

Q. From your general knowledge of transportation as it was indicated by being able to answer this question asked by counsel for the Market Street Railway, is it your opinion that the cost per mile per passenger or average passenger on the Market Street Railway is higher or lower than the average railway throughout the United States?

A. Well, I would have to make this answer, that I think the average length of ride is less and then you have to compare 5 to 8, that is quite a difference in there. I am not really prepared to give you much help on that, Mr. Clark.

Commissioner Sachse: Mr. Hunter, I think already there is testimony in this record that San Francisco is a very good street railway city for the reason that the average haul is very low in San Francisco compared with other cities?

A. That is right.

Q. That is correct?

A. That is right.

Q. Have you in mind that on any given fare the cost per mile in San Francisco would be higher, the fare per mile

would be higher than the City where the average haul is longer?

A. Well,——

[fol. 829] Q. Compare Los Angeles and San Francisco.

A. The average ride in Los Angeles is exceptionally long as cities go. The fare there is 7 and 5 here.

Q. We are speaking of Market Street.

A. I beg pardon?

Q. We are speaking of Market Street.

A. Yes.

Q. You said the fare was 5 here.

Commissioner Clark: What do you mean "5 here"?

A. 7 in both places. I was thinking of the Municipal.

Q. We are speaking of the Market Street Railway.

A. I was mistaken there. The fare per mile on the Market Street Railway at 7 cents is higher than the fare per mile in Los Angeles on the Los Angeles Railway where the average length of ride is longer.

Q. Do you know of any City, now that you are back on the 7-cent Market Street fare and possibly you did not have that in mind before, do you know of any city where the cost per passenger per mile is as high as it is in San Francisco?

Commissioner Havenner: You mean cost to the passenger?

Commissioner Clark: Cost to the passenger.

A. I do not know of any. I would not say there was not, but you would have to take into consideration a lot of these densely built up sections. But, generally speaking, San Francisco is among the lowest average length of rides. I do not happen to know of any that is shorter, but it is well down that scale. New York, I haven't the figures in mind on that, I do not know what that figures per average ride. [fol. 830] They did have a 5-cent fare and, of course, the subways, but in answering your question I think perhaps before it would be of any use to the Commission I should make some study of that.

Commissioner Havenner: Any further questions?

Mr. Apel: Nothing further, thank you.

Commissioner Havenner: No further questions?

Mr. Cassidy: If the Commission please Commander Jenkins of the United States Navy is present in the Court

Room. I should like to call him for a statement on the Market Street situation.

Would you take the stand, please.

ARTHUR C. JENKINS, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

The Witness: Arthur C. Jenkins, Lieutenant Commander, U. S. N. R. Domestic transportation officer, 12th Naval District.

Mr. Cassidy: Commander Jenkins, will you state very briefly your education and training in transportation matters?

A. My education consists of the degree of Bachelor of Science, University of California, 1931, majoring in electrical engineering. Previous to that training in business college. The training subsequent to that, post graduate work in mathematical theory of investment and accounting.

[fol. 831] My experience background consists of, prior to coming with the Railroad Commission in 1931, business and construction. Subsequent to December—subsequent to July 20, 1931, I was employed by the California Railroad Commission up to July 10, 1942, when I went into the Navy.

During those years with the Railroad Commission I was engaged in Railroad Commission of various types, including the valuation of all types of utilities, transportation, investigations of most of the transportation companies in the State of California. During recent years of my employment with the Commission I was Transportation Research Engineer, during which period of time I had occasion to prepare extensive reports as a result of investigations of transportation companies, and submit them in evidence before the Railroad Commission of the State of California.

I am a registered civil engineer, State of California, member of the American Society of Civil Engineers, member of the American Institute of Electrical Engineers.

Q. Do your duties with the Navy involve transportation matters at present?

A. Yes. My appointment with the Navy as domestic transportation officer involves jurisdiction over operation, maintenance, procurement, assignment of all domestic transportation equipment within the 12th Naval District, including the northern part of California, Nevada, Utah and Colorado.

Q. And are you familiar with the local transportation [fol. 832] situation?

A. In San Francisco?

Q. Yes.

A. Yes, I am.

One of my principal problems with the Navy is in working out the transportation requirements of Naval personnel at Naval establishments and the transportation of civilian personnel employed at private plants producing for the Navy, and in San Francisco and on the other side of the Bay the Navy has its largest concentration of Naval activities in the District.

Q. Now, Commander, we would appreciate a statement from you concerning the service of the Market Street Railway Company in San Francisco as you are familiar with it.

A. The Market Street Railway lines serve only one major Naval establishment in San Francisco, namely, the U. S. Naval Drydock at Hunter's Point. They serve also the Bethlehem Steel Company shipyards that is producing ships for the Navy located along Third Street to the south of the central business district. There is a large employment at the Bethlehem Steel yard and we have a relatively large employment at the present time at Hunter's Point Drydock, although we have not reached anywhere near full capacity there as yet.

We have worked very closely with the Market Street Railway Company in preparing the service for those two establishments and, up to the present time, we are happy to say that the service that they are rendering is entirely [fol. 833] satisfactory on a general basis. From day to day, of course, we have complaints, but Market Street has been cooperative in reacting to any suggestions that we make with respect to those problems as they are involved in the Navy's interest.

Mr. Cassidy: I think that is all, Commander, unless there are further questions from the Commission.

Commissioner Havenner: No questions?

Mr. Appel: I have no questions.

Commissioner Havenner: Has the Commission any questions?

Q. Commander, are you in a position to make any comparison between the efficiency of the service rendered by the Market Street Railway in San Francisco to similar service rendered by street car companies in other cities of the State?

A. Not except to the extent they are involved with the Naval establishments.

The District to which I am confined includes only the San Francisco area as a large population center, therefore, the only comparison I could make would be between service provided on the San Francisco side of the Bay and that provided on the east side of the Bay. The characteristics of our transportation problems are considerably different on the two sides of the Bay.

Key System; on the other side, is providing service to numerous Naval activities, their operation being largely bus service, at least to our activities. The characteristics [fol. 834] generally are somewhat different than they are in San Francisco. I might say that we have been receiving very good treatment from Key System; any complaints that we have had they have reacted to in a favorable fashion. We have no specific complaint at the present time with respect to their service nor have we with respect to the service that the Market Street Railway is providing to us.

However, as I said before, we are, at the present time, at the bottom of the peak traffic that is going to result from Naval establishments in this area. We are expecting rapid increases, and it is already taking place, so that our problem at the present time is not the problem we are going to be confronted with in the future; the equipment that is available here in this area or to take care of our immediate needs, may not be sufficient to take care of the needs of the near future.

We must also keep in mind that, so far as our dealing with transportation companies are concerned, we must work very closely with the Office of Defense Transportation. That agency has been cognizant over the number of buses

and street cars that can be used by the transportation companies and they also have jurisdiction over the number of units of such equipment that can be used by the Navy. We are restricted in the extent of our own Navy operated passenger service by the Office of Defense Transportation and we must comply with their General Orders.

[fol. 835] By reason of that whatever we propose to the Market Street Railway Company in the way of service that we think is designed to satisfactorily take care of the Navy's requirements must first be passed upon by the Office of Defense Transportation. We have, thus far, been very closely in agreement as to what our needs have been and the Office of Defense Transportation has collaborated with us almost a hundred per cent.

So that we have, in addition to the immediate problem, our future problem to look forward to and I might say, further, that in certain instances where the transportation companies have not been able to give us the service that we feel is necessary to keep the production of our plants functioning up to full capacity we are equipped, through Public Law 779, with the right of procuring equipment and turning it over to the transportation companies for them to operate in bringing up the standards of service to meet the Navy's requirements. That has been done in San Francisco by the leasing by the Navy of 16 buses to the Market Street Railway Company for operation in their lines that are serving Hunter's Point and Bethlehem Steel.

Q. Do your duties involve any consideration of the price of service—prices of transportation service?

A. No, in the work that I am doing now we give no consideration whatsoever to the price of service other than to the extent to which the fare charged may adversely [fol. 836] affect the employment at various Naval establishments, and we find that during prosperous times like this we are confronted with now we do not run into any difficulties with respect to our employment problem by reason of the fares. The fluctuation in employment is more critically affected by the service than it is fares, and in connection with the service it is more delicately tied in with the time in transit rather than the inconvenience of getting into the vehicle.

Commissioner Clark: May I ask, Commander, what have been the nature of your requests that you have made of

the Market Street Railway that you say have been complied with?

A. We, from time to time, at the gates of Hunter's Point, make a traffic check there to determine the number of persons, employees coming into and out of the establishment. We check the bus loading at the loading platform in Hunter's Point to determine what the schedule frequencies are and how well the buses are maintaining the frequency. We check also the loading to determine whether or not, in our estimation, there is an undue wait involved for the employees in getting the Market Street Railway buses.

Q. Pardon me, that answers the question satisfactorily in that respect. I would like to further ask if the extent to which you have concerned yourself with the Market Street Railway facilities has been entirely about its buses?

A. With the exception of the Bethlehem Steel plant. [fol. 837]. There we were involved with the Third Street Railway line, reestablishment of service on the Third Street Railway.

Q. Which has been done?

A. That has been done up to a point some distance away from the main gate of the Bethlehem plant. I think that possibly in the future better utilization of the rail facilities could be given if that line were extended if practicable, physically, up closer to the gate at the Bethlehem Steel.

Q. You, then, officially, in your present capacity, have had no reason to concern yourself with, or familiarize yourself with the general conditions prevailing as far as the Market Street Railway handling of general traffic is concerned by their electric railway system?

A. Only to the extent that employees at the headquarters, which is located in the Federal Office Building, and employees and Naval personnel located at numerous other Navy offices scattered throughout San Francisco complained. Now, that is a service situation.

Q. Have you made any requests so far as any improvement is concerned, specifically, in that regard?

A. Specifically, the only one that I recall other than the operations of Third Street and the other line, Silver Avenue line service Hunter's Point, that has been some time past with respect to the Larkin Street line, I do not recall the date of it. At the time I made my complaint to the Company there was pretty bad service on the Larkin

[fol. 838] Street line and the intervals between vehicles were reported to be too long. Now, I have heard nothing further from any of our employees with respect to it since the letter was submitted, so I assume something has been done about it.

Q. What would have been done as regards—in reply or in response to your letter that would have affected the situation?

A. Well, in connection with that particular problem, better scheduling, that is, better supervision of the existing equipment operating on the line to establish uniform headways would have relieved the situation considerably. Of course, the maximum benefit or maximum relief could have been obtained by the addition of more equipment on the line.

Q. Is it your opinion, then, if conditions warrant, that more equipment can be provided in this market, both as to personnel and equipment?

A. I do not keep very closely in contact with that in my present position except as it applies to the Navy's requirements and we find that it is extremely difficult for the Navy to procure buses for its own official use. Our general knowledge of the situation would indicate to me that there is an extreme scarcity of passenger carrying equipment of the transit type. That has been restricted by the War Production Board to a figure that I recall as being about 3000 vehicles for Continental United States for the year 1944. That number of vehicles would have to be distributed [fol. 839] between all of the various carriers in the country.

Q. To what extent have you investigated proper railway facilities on the Market Street line as might be noted affecting your official position or your official duties.

A. I have not gone into that which has been outside the jurisdiction of the duties of my office.

Commissioner Havenner: Does the Navy operate its own buses with Navy personnel?

A. We have certain operations that are conducted by Naval personnel. That, largely, is confined to buses used for official purposes and transporting drafts and transporting men between the various Naval stations in this area. We handle a large volume of traffic on our own equipment by reason of the fact that the nature of our business is such that the common carriers could not very well adapt

their service to our sporadic requirements. We have one operation that serves the Mare Island Navy Yard wherein we have 265 of the large Diesel 47-passenger integral type buses that are operated by the Pacific Greyhound Lines for the Navy. But in transportation of passengers on regular schedules, the operation of that character performed by the Navy is relatively minor, at least, in the 12th District. There, again, we are prohibited from operating Navy owned buses for the transportation of personnel, Navy personnel or civilian workers on regular schedules to and from our establishments unless there is absolutely no other mode of transportation available. Then, under [fol. 840] Public Law 779, we are permitted to establish our own transportation system; but, there, again, we are required to have transportation provided by the common carrier in the field if there be one that is equipped to do it and, if not, then we can provide our own drivers and operate our own system, but we have to charge fare for transportation commensurate with the fares generally charged in the area.

Commissioner Clark: Just one more question.

Any improvement, that may have been made in service in compliance or as a result of your request might have been made at the suggestion—at the expense of the balance of the service affecting the civilian population?

A. It is conceivable that that might have been the case. However, we did not go to the extent of determining whether or not it was. We presented our requirements to the Companies, in most cases they have complied with our requests. Our primary interest, of course, is in keeping the Navy establishments going and we leave the establishment of service to the general public up to the other agencies that have jurisdiction over it. We do, however, take the position that at any time the transportation companies can not provide service to the Navy establishments, either by reason of lack of equipment or by reason of lack of manpower, that then our establishment will continue to be operated if we have to put in our own transportation service.

Commissioner Havenner: Referring for a moment to [fol. 841] your statement about having made complaints as to the service on the Larkin Street line, do you happen to recall whether that was before the Company resumed street car service on Larkin Street?

A. I do not recall just the date when that complaint came through. I believe it was bus operation at the time; that is the best of my recollection.

Commissioner Havenner: Any further questions of the witness?

Commissioner Sachse: I would like to ask Commander Jenkins this question: I think you said in your Hunter's Point operation there you observed the quality and the character of the service as to loading of buses and the frequency of schedules and if the standards or requirements that you think are necessary are not met then you ask for improved service, that is correct?

A. That is correct.

Q. That is usually or invariably complied with?

A. Yes, we have had, so far, very good cooperation.

Q. Now, you do not know, then, it is outside of your jurisdiction whether similar standards are called for or observed in the general public service of the Market Street Railway in San Francisco, do you?

A. No, I am not acquainted with the efforts that the Company is making to take care of the problem elsewhere.

I might also point out that in connection with the request that we have made of the Market Street Railway Company, we have requested and been granted improved service on [fol. 842] Third Street, we have requested and been granted an extension of the former Silver Avenue motor coach line that formerly terminated at Third Street, extended on down Third Street and Evans Avenue directly into Hunter's Point. Only last Saturday, I believe it was, at our request, Market Street altered that line and ran it directly across Third Street over Palou Avenue into Hunter's Point, giving a more direct service and providing transportation for a housing project that is being constructed to the south and west of Hunter's Point.

Commissioner Clark: You say they altered the service in order to accommodate your requirements. Do you know what was done as far as relieving the situation was left as affecting those who had previously been depending upon that? In other words, when a move of that kind is made do you concern yourself with those who may be inconvenienced when your requirements are being complied with?

A. Yes. The only persons who would be involved in connection with that would be those living along Evans Avenue

and Innes Avenue to Hunter's Point, and we already have an operation on that route. The Third Street line coming from downtown San Francisco goes over that same route so there were two lines operating over the one street into Hunter's Point, so what we have done is separate those two lines up to that point so that one will serve the territory that was formerly without service and increase the service on [fol. 843] the other, at least maintain service on the other to meet the necessity of the people living along that line.

Q. The Navy is in a position there, through your representations, providing your requirements as you may ask them, are not complied with, you are in a position to establish service to meet your own requirements, is that right?

A. Yes, that is true. That is only done as a last resort.

Q. It has not been necessary here?

A. No, it has not.

Q. In other words, the Company has complied sufficiently satisfactorily with those requests that you have made making it unnecessary?

A. That is true. Our first step, if service is not brought up to the standard we think it should, is to make a request upon the Office of Defense Transportation that something be done about it. We have not had to do that as yet in San Francisco and I do not anticipate that we will. But then, if, after having done that, the service still is not brought up to what we require for our establishments then, as a last resort we take the step of putting in our own service.

Commissioner Havenner: Further questions?

Thank you, Commander.

Take a recess until 2 o'clock.

(Whereupon, at the hour of 12:20 o'clock P. M. a recess was taken until 2 o'clock P. M.)

[fol. 844] Afternoon Session: 2:05 o'Clock P. M.

Commissioner Havenner: The Commission will be in order.

Do you desire to present any witness at this time?

Mr. Appel: Yes.

Are you through, Mr. Cassidy?

Mr. Cassidy: Yes.

Mr. Appel: Mr. Kahn, will you please take the stand.

SAMUEL KAHN, a witness called on behalf of the Market Street Railway Company, being first duly sworn, testified as follows:

Direct examination:

Mr. Appel: Mr. Kahn, what position do you hold at the present time?

A. I am President and General Manager of the Market Street Railway Company.

Q. And how long have you been connected with the Market Street Railway Company?

A. I have been connected with the Market Street Railway Company since November, 1925.

Q. And in what capacities, please?

A. In that capacity, with the exception of the first year or year and a half; at that time I was Executive Vice-President.

Q. Your profession is what, Mr. Kahn?

A. I am an engineer.

Q. Would you be good enough to state your educational qualifications and experience, please?

A. Well, after finishing highschool I entered university, spent 5 years there, the first 2 years studying civil engineering and the subsequent 2 years the school of electrical [fol. 845] engineering, and graduated as an electrical engineer.

Q. From what institution, please?

A. Purdue University.

Q. And your experience in reference to the utility business?

A. My entire time since leaving College has been devoted to the utility business in the capacity of engineer and consulting engineer and in managerial capacities.

Q. Now, in the year 1937 the Railroad Commission of the State of California made an order authorizing the Market Street Railway Company to charge 2 cents, in addition to the 5-cent fare, for each transfer issued. Do you recall that issue?

A. It did.

Q. And did the Market Street Railway Company ever ask for or suggest such a change in fare and transfer charge?

A. No.

Q. Had you, as President of the Market Street Railway Company, given consideration to such a change in the fare structure?

A. Such change was given consideration by me and others of our staff and the thought was discarded and in lieu thereof the application to the Commission at that time for an increase in fares was on the basis of 7 cents with four tokens for a quarter.

Q. And had you given consideration to that charge for transfer before you ever filed any application for an increase in fares?

A. Oh, yes, I thought I made that clear. It was given full [fol. 846] consideration and discarded. It was discarded for the reason that we figured it would produce no benefits to the Company—no financial benefit.

Q. Did you ever believe that such a charge for transfers would solve the Market Street Railway Company's then existing problem?

A. No.

Q. Did you give that plan what you considered a fair trial?

A. Yes. After the Commission authorized us to put into effect a 5-cent fare with a 2-cent transfer charge we did not want to come back to the Commission and ask for a rehearing nor did we want to take any other course open to us, but we thought, inasmuch as the Commission had issued such order, we would give it a fair trial and determine what the actual results would be under such a fare structure.

Q. And did the results assist in solving the Company's then existing problem?

A. No. The results, unfortunately, put the Company in worse shape financially than it had been theretofore.

Q. Now, while both the Municipal Railway and the Market Street Railway Company were on a straight 5-cent fare can you tell us the difference in revenue per hour, say, for 4 years prior to 1938?

A. Yes. I will have to refer to my notes.

In the year 1934 the receipts per car hour of Market Street Railway were \$3.12 and the corresponding receipts of Municipal Railway were \$3.26; in the following year those figures were \$3.26 and \$3.45, respectively; in the year [fol. 847] following that, which would be the year 1936, the receipts were \$3.40 and \$3.55, respectively, and in the year 1937 the receipts were \$3.34 and \$3.63, respectively.

Q. To what do you attribute that, Mr. Kahn?

A. The Municipal Railways serve a more lucrative territory than Market Street Railway Company or, to express it in different terms, it serves largely the so-called fat territory, whereas, we are obliged to serve the lean territory as well as the fat territory.

Q. You are familiar with Exhibit No. 10 that has been introduced in evidence?

A. Yes.

Q. And I particularly call your attention to Table 3-3 that follows page—follows the chart that follows page 17. That covers—that is the comparison of passenger revenue trends of the Market Street Railway Company, San Francisco Municipal Railway and Los Angeles Railway and that purports to cover the period from 1922 to 1942, inclusive. Would you tell us what, if any, increases there were in the population of the City of Los Angeles during that period?

A. The population of Los Angeles in 1922 was 736,963 people; in 1942 the population of Los Angeles was 1,625,000 inhabitants.

Q. And the same period in San Francisco?

A. San Francisco the population in 1922 was 537,826; in 1942 it was 728,536.

Q. What was the percentage of increase in population [fol. 848] of Los Angeles during that period?

A. The population of Los Angeles increased more than 100 per cent and the population of San Francisco increased about 35 per cent.

Q. Have you in mind Exhibit No. 1 which dealt with the comparative income statements of the Market Street Railway Company and the Municipal Railway of San Francisco?

A. I thought I had the exhibit here, but I do not seem to be able to locate it.

Q. I have a copy, Mr. Kahn.

There is a breakdown—it is on page 2, may it please the Commission—there is a month-by-month breakdown for the year 1942 and for three months of 1943. You are familiar with that, are you, Mr. Kahn?

A. Yes.

Q. Does the breakdown for 1943 include the payment of income taxes by the Market Street Railway Company for this year?

A. We are accruing taxes for this year pursuant to the Federal Income Tax laws that are not included in the 1943 figures.

Q. And the income tax ~~accrual~~, then, has to be set up for the year 1943, is that correct?

A. Yes.

Q. Now, in reference to the matter of salaries—of wages, rather, of the union employees of the Market Street Railway Company, were any demands made upon the Company in that regard within the last year?

A. Yes, our agreement with the union expired June 1st, [fol. 849] 1943 and the union made demands upon the Company which, if accepted and met by the Company in toto, would have cost the Company approximately one and a quarter million dollars a year.

Q. I show you, Mr. Kahn, a document here and ask you whether or not that document is ~~contains the demands~~ from Division 1004, that is the Market Street Railway Company union, in respect to wages?

A. Yes.

Q. And working conditions as well?

A. That is correct. This is a copy of the union's demands.

Mr. Appel: I would like to offer this in evidence—pardon me, Mr. Cassidy, I have not given you a copy yet, but I have it here for you.

Commissioner Clark: What was the date of this demand, please?

A. Our contract expired June 1st, 1943.

Commissioner Havenner: Without objection the document consisting of 30 pages entitled, "Changes proposed by Division 1004, A. A. of S. E. R.—" I can not read the rest of it—"in the agreement with—"

Mr. Dains: "and M. C. E. of A."

Commissioner Havenner: "In the agreement with Market Street Railway Company" will be received in evidence and marked Exhibit No. 20.

Mr. Appel: Would you tell us, Mr. Kahn, was a loss of revenue passengers anticipated in 1937 and 1938 at the various hearings before the Railroad Commission in the event that an increase in fares was granted?

A. Yes.

[fol. 850] Q. I refer to 1937 and 1938, that was when the various applications were heard?

A. Yes.

Q. And what, if any, effect has been experienced in reference to such revenue passengers because of the expansion and extension of the Municipal Railway of San Francisco as far as the Market Street Railway Company operations are concerned?

A. We have also lost patronage because of such extensions to Municipal Railway.

Q. And how did that affect the car hours, say, of operation of the Municipal Railway and the Market Street Railway from the years 1937 and '8 to 1941 and 1942? We use those two years because they make their return on a fiscal year basis.

A. Yes. The additions to Municipal Railway in car hours amounted to approximately 20 per cent within that time.

Q. It amounted to what per cent, Mr. Kahn?

A. I am looking for my notes now. I said 20 per cent, but I think perhaps it is 18 per cent.

Q. 18?

A. Yes.

Q. And in that connection, Mr. Kahn, I show you a document entitled, "Expansion of service rendered by the Municipal Railway of San Francisco". You had that prepared under your direction to be used as an exhibit in this proceeding?

A. That is right.

Mr. Appel: I would like to offer this in evidence.

Commissioner Havenner: Without objection the document [fol. 851] consisting of 5 pages entitled, "Expansion of service rendered by the Municipal Railway of San Francisco car and coach hours" will be received in evidence and marked Exhibit No. 21.

Mr. Appel: I assume wherever there is a statement contained in these exhibits it will be assumed they are read in evidence without trying to read them at the hearing.

Q. What, if any, extensions and expansions were made by the Municipal Railway within the last several years, Mr. Kahn?

A. Well, the outstanding extension of its facilities was the establishment of the trolley coach line on Howard

Street where Market Street Railway Company formerly operated a street car.

In addition to that it established some bus lines and, of course, the Howard Street line and some of these bus lines were competitive with Market Street Railway Company and took away some of the latter's patronage. In other words, the purpose of this exhibit is to indicate that the Market Street loss of patronage was not entirely due to the fare differential, but to the expansion of Municipal Railway.

Commissioner Sachse: Mr. Kahn, what became of the Howard Street service that the Market Street Railway rendered?

A. We were ordered by the City to quit operating on Howard Street. At the time that Market Street Railway Company obtained an operating permit by vote of the people there were two of those lines that were not included in [fol. 852] the permit; one of them was the Howard Street line and the other was the Post Street line. We continued to operate the Howard Street line for some years after the permit was granted, but finally ceased operation at the request of the City.

Mr. Appel: In connection with the situation on lower Market Street, in view of Exhibit No. 18, that diagram that was offered in evidence this morning, and also what has heretofore been said with reference to the transfer of cars from the one track to the other track, have you considered any change on that lower Market Street line, Mr. Kahn?

A. Yes. We believe we have a more equitable solution than has been presented heretofore.

The City, on several occasions, has proposed leasing not alone track space of the Market Street Railway, but also some of its street cars and also proposed to operate one or more of those lines on the inner tracks on Market Street which, of course, belong to the Market Street Railway Company. Now, we think a simpler solution of that situation would be for the Municipal Railway to permit the Market Street Railway to operate its so-called "X" route. That would mean that the Market Street Railway Company would operate its cars on its own tracks from the lower end of Market Street to the point where the street cars leave Market Street to enter the Dubose Tunnel, and after run-

ning through the tunnel continue on its path out Judah [fol. 853] Street to the beach.

During the peak hours there are 31 cars operating on the "N" line of the Municipal Railway and if that service was made the responsibility of the Market Street Railway Company it would equalize almost to the car the number of cars on the inside tracks and the number of cars on the outside tracks or the outer tracks of Market Street during the afternoon peak hour.

Q. That is, on lower Market Street?

A. Lower Market Street.

Q. And what line of the Market Street Railway Company do you propose could be operated in lieu of that "N" service?

A. Well, I do not understand—quite understand this particular question.

Q. Maybe I could suggest it, with the Commission's permission. The number 6 line is the one that you had in mind, wasn't it, generally, to substitute in lieu of the "N" line?

A. Well, I do not know as I get that—as I gave that precise consideration, but it could be the No. 6 line.

Q. It could be the No. 6 because the No. 6 generally serves that same territory?

A. Yes.

Q. That is what I was getting at, Mr. Kahn.

A. Yes.

Q. What is the percentage of car hours of the Municipal Railway operation of Market Street that the "N" line takes [fol. 854] up?

A. The Municipal Railway, for the 12 months ended June 30, 1942, operated a total of 870,057 car hours. Of that operation the "E", "F" and "H" lines, which do not operate on Market Street, totaled 205,309 car hours. Subtracting that latter figure from 870,057 car hours, leaves a balance of 664,748 car hours of Municipal Railway operation on Market Street. And again, of that latter amount, the "N" line accounts for 113,969 car hours, which is equivalent to 20½ per cent of the Municipal Railway's operation on Market Street.

Q. Now, in the event that such change took place would that release other Municipal Railway equipment for operation—would that release Municipal cars for operation on other lines?

A: It would release 31 cars of the Municipal Railway for operation on other parts of its system.

Commissioner Sachse: Have you given consideration, Mr. Kahn, what effect that would have on the respective revenues of the Market Street and the Municipal Railway?

A: The revenues, of course, of the Market Street Railway, would increase but its operating expenses would increase, too. But I am assuming here that in this instance, revenues—the revenue feature is not so important as the service feature.

Commissioner Clark: Can you reasonably believe that the Market Street line would entertain the suggestion—or the Municipal?

A: I do not know.

[fol. 855]. Q: Has it been submitted or have you discussed it with them?

A: No, sir.

Commissioner Sachse: I notice you said in this instance the revenue feature would not be of controlling importance. Just what do you mean by that, in this particular instance only or in the whole proceeding here?

A: I mean this that in the exhibit, that has been introduced heretofore in this case it showed more cars operating on the lower end of Market Street on the outside tracks than are operating on the inside tracks and the solution was at least suggested by operating some of the Municipal cars on the inner tracks. We offer this as an alternate and more equitable solution of the problem.

Mr. Appel: Now, in relation to the 7-cent fare, Mr. Kahn, what has the straight 7-cent fare accomplished in the matter of preserving or establishing the solvency of the Market Street Railway Company?

A: Why, the 7-cent fare enabled the Company to meet its pressing obligations and thereby precluded the possibility of bankruptcy.

Q: What would have been the condition of the Market Street Railway Company if it continued on on a straight 5-cent fare and did not have the increase to the straight 7-cent fare?

A: It would be bankrupt today.

Q: In that regard have you prepared or had under your direction an exhibit prepared, Mr. Kahn?

A. Yes.

Q. And I show you this exhibit. Is that the exhibit?

[fol. 856] A. That is it, yes.

Q. Will you please explain what that exhibit is, Mr. Kahn?

A. This exhibit is a study to determine the net income of the Company for the first 6 months of the calendar year 1937, 1938 and 1939 if a 5-cent fare with free transfers had been in effect, and the results obtained under such a system are compared with the actual results that obtained with the fares that this Commission authorized the Company to charge.

Commissioner Clark: Without examining the exhibit may I ask does that reflect the induced traffic that resulted probably in greater volume as a result of the decrease?

A. I think I can answer that question, Mr. Commissioner, as I explain the exhibit. I think that answer will be apparent to you.

Q. Would you object to answering it as I have asked it, that is, does your exhibit as it now stands take that into consideration?

A. Will you read the question, please, Mr. Reporter?

(Question read.)

A. Well, this exhibit reflects what we believe the traffic would have been under the 5-cent fare following the, you might say, the trend of business conditions as determined by the Chamber of Commerce locally.

Mr. Appel: In relation to that exhibit have you a statement you desire to read into the record, Mr. Kahn?

[fol. 857] A. I have.

Q. Will you be good enough to do so?

A. "During the years 1937 and 1938 the Company made applications to the Railroad Commission for permission to increase its fares from 5 cents to 7 cents with four tokens for 25 cents and subsequently for a straight 7-cent fare. In seeking these increases the Company was fully aware and so testified that its patronage would decline but that its net earnings would increase sufficiently to permit the Company to meet its current obligations thereby preserving its solvency. Again in seeking these increases the Company was not asking for a reasonable rate of return as

it realized that its 'right to earn' was not compatible with its 'ability to earn' under prevailing conditions.

"If the Company had not thought and the Commission had not granted the increase in fares to 7 cents it could not have met its current obligations and bankruptcy would have ensued. To prove this statement the Company has prepared a table attached hereto which gives the estimated income for the first 6 months of the calendar years 1937, 1938 and 1939 on the basis of a 5-cent fare with free transfer and an actual income for those periods at the fare which it was permitted to charge. These 6 months periods were selected for the reason a 5-cent fare with free transfer was in effect for the first 6 months of 1937; a [fol. 858] 5-cent fare with a 2-cent transfer charge was in effect for the first 5 months of 1938; and a 7-cent fare with free transfer was in effect for the first 6 months of 1939.

"The exhibit indicates for the first 6 months of 1938 that the Company's net income before depreciation would have been \$12,704.04 (red figures) as against an actual income before depreciation of \$48,442.36 (red figures). In other words, for this 6 months period of 1938 it would appear that the Company would have been better off had it continued to charge 5 cents with a free transfer instead of 5 cents with a 2-cent transfer charge;—"

Mr. Beck: Mr. Kahn, you mean to say after depreciation it would be \$48,000 in red, do you not?

A. No, I said "before".

Q. Well, look at the column 9.

A. Will you permit me to finish this? Then you can engage in any amount of cross-examination you want.

Mr. Beck: Just a mistake in column 9 and 10, you transposed it.

A. Well, I again repeat will you let me finish my statement and then I will answer all your questions.

Where did I leave off, Mr. Reporter?

(Record read as follows: "In other words, for this 6 months period of 1938 it would appear that the Company would have been better off had it continued

to charge 5 cents with a free transfer instead of 5 [fol. 859] cents with a 2-cent transfer charge;—")

The Witness: "—however, it must be borne in mind that the Company did not apply to this Commission for a 5-cent fare with a 2-cent charge for a transfer nor was there anything in the record from any source to justify such fare structure. Prior to making the application to the Commission for an increase in fares, the Company gave consideration to preservation of the 5-cent fare with a charge for transfers and discarded when it realized that its position would not be improved under such a structure but quite to the contrary would become worse.

"We next approach the period embracing the first 6 months of 1939 when the Company was authorized to charge a 7-cent fare with free transfer and during this period we find that the estimated net income before depreciation had a 5-cent fare been in effect would have been \$109,728.04 (red figures) as against an actual income before depreciation of \$115,140.94 thereby bettering the Company's position for that period by the sum of \$224,868.98 which enabled the Company to preserve its solvency."

Mr. Appel: Now, Mr. Kahn, would you be good enough to explain in detail what is shown for each of the years mentioned in this exhibit?

A. This statement, consisting of 10 columns, covers the first 6 months of the years 1937, 1938 and 1939, respectively. The starting point used is the actual revenue car hours [fol. 860] operated for the first 6 months of 1937 and is assumed to represent 100 per cent or 1,072,447 revenue car hours, all of which was operated at the 5-cent fare. This figure is then adjusted to the business trend in San Francisco as compiled by the Research Department of the San Francisco Chamber of Commerce on a percentage basis, minus or plus, as compared with the previous year 6 months period.

Column 2 represents the estimated passenger revenue based on the actual revenue per revenue car hour of \$3.3070, which prevailed during the first 6 months of 1937 under a 5-cent fare. This figure \$3.30 plus is then applied to the car hours in column, which gives the estimated passenger revenue shown in column 2.

Column 3 represents operating expenses based on revenue car hours given in column 1 times the actual operating expense per revenue car hour for the various periods shown.

Column No. 4 is column No. 2 less column No. 3, giving us the estimated passenger revenue, less operating expenses.

Column No. 5, represents the actual other income taken from operating reports of the Company and column No. 6 represents actual railway tax—represents actual tax railway operations taken from operating reports.

Column No. 7 represents the balance, after deducting the taxes.

[fol. 861] Column No. 8 represents the total income deductions that is taken right from the operating reports.

Column No. 9 estimates—represents, rather, the estimated net income before depreciation and column No. 10 represents actual net income before depreciation taken from operating reports.

Q. Would you state, please, what the effect would have been on the Market Street Railway Company's income under a 5-cent fare and under a 7-cent fare as shown on that exhibit for the years 1937 and 1938 and 1939, confining yourself to the first 6 months of each, of course.

A. Well, for the first 6 months of 1937 we were operating at a 5-cent fare so we do not show the estimated net income because we have the actual income for that period.

For the year—for the first 6 months of 1938 our estimated net income before depreciation was \$12,704.04 (red figures) and the actual net income before depreciation was \$48,442.36, red figures.

Now, for the first 6 months of 1939 our estimated net income before depreciation, had we continued on the 5-cent fare, would have been \$109,728.04, red figures. That means deficit when I say "red figures" as against actual net income before depreciation of \$115,140.94.

Commissioner Clark: Pardon me right there. Does that estimate now, Mr. Kahn, on the 5-cent estimate as compared with a 7 cent actual experience allow for the expansion in [fol. 862] number of fares collected because of the induced traffic resulting from the 5-cent fare instead of the actual 7-cent fare?

A. Yes. We gave no consideration to the reduced traffic because of the fare differential. We based the traffic trend on the trend of business activity as developed by the Research Department of the Railroad Commission—of the Chamber of Commerce.

Q. That is not an answer to my question, correctly, as I understand it.

You estimate that if you had been operating under a 5-cent fare for a given period of time that your income would have been a certain amount of money?

A. Yes.

Q. In actual experience while you were charging 7 cents for the same period it was an actual amount of money.

A. Yes.

Q. The difference between that amount of money represented a substantial difference?

A. Yes.

Q. Was that entire difference based on the assumption that the same number of passengers would have been retained and pay 5 cents as did ride and pay 7 cents?

A. No, no. The number of passengers which we estimate would pay the 5-cent fare is shown in column 1. That column indicates the number of car hours operated in 1937, 1938 and 1939. Using column 1—using the first 6 months of 1937 as 100 per cent and following the trend of business activity which appears on the page preceding the table, [fol. 863] we find that 968,119 car hours would have been necessary to haul the number of people had a 5-cent fare been in effect during that period.

Q. In other words, provision had to be made for an increased number of passengers that would travel on the line in that given period of time providing the fare would have been 2 cents less per passenger?

A. Yes.

Q. Do you remember what percentage of additional passengers you based that figure on?

A. There were fewer passengers figured in 1939.

Q. There were fewer passengers?

A. In 1939.

Q. That actually rode under the 7-cent arrangement than would have ridden under the 5-cent arrangement?

A. That is right.

Q. What percentage?

A. I don't know, I haven't that figure.

Q. Is there any one present that would know?

A. I do not know.

Q. Representing your Company?

Commissioner Sachse: Mr. Clark, may I suggest that depends what estimate you make of the number of passengers that would have rid-en under the 5-cent fare.

Commissioner Clark: I realize that, but I am wondering if the Railway Company through any of its representatives does have that figure?

Commissioner Sachse: It is here on this exhibit.

Commissioner Clark: I say at this time.

[fol: 864] Commissioner Sachse: Well, this is Mr. Kahn's exhibit.

Commissioner Clark: Where?

Commissioner Sachse: Well, it is not directly here, but it is expressed in terms of increased car hours.

The Witness: That is right.

Commissioner Clark: Increased car hours? That does not answer the question, but go ahead.

Commissioner Sachse: May I just follow up on that point, unless you are not through?

Commissioner Clark: I am through, because I can not get an answer.

Commissioner Sachse: If I may just continue on that same thought, looking at the last sheet in this exhibit, which has not as yet a number, it is correct, is it not, Mr. Kahn, that the gross revenue that you figure that the Company would obtain under any fare structure depends on the number of passengers that you haul under that given fare structure?

A. Yes.

Q. In other words, the more passengers you haul or estimate you will haul the greater your gross revenue will be.

A. You mean fares being equal?

Q. Under any fare structure?

A. Yes.

Q. Now, the net revenue, on the other hand, which shows here in column 10, that is, before depreciation, depends on the operating expenses that you will have to deduct from the gross revenue?

A. Yes.

[fol. 865] Q. And the way you have figured operating expenses in this exhibit is to base it on the number of car hours operated?

A. Yes.

Q. Now, you are assuming here that with a certain percentage increase of revenue or of passengers you will have to increase your service, expressed in car hours, a certain percentage?

A. Yes.

Q. Now, do you know that these percentages that you say you must increase your service in terms of car hours reflect in any degree whatsoever the actual experience of the Company under actual conditions since these rates were increased, based on increased business that the Company has had to handle in this period—in this period since the rate increase was made?

A. Well, of course, in making this exhibit we are—we based it upon normal conditions and normal times, not on the abnormal conditions or abnormal times. We took the Company as we found it in 1937 and tried to project it into the future on that basis.

Q. Well, what do you consider normal times? Up to what time prior to the war?

A. Well, I think we began to engage in war activity prior to the Pearl Harbor bombing.

Q. Very well. Now, let us confine ourselves, then, to that period.

A. We will say, if my memory serves me correctly—I should say up until 1940.

Q. Very well, let us take, then—let us consider normal up to 1940, any time you wish, any months you wish to take. [fol. 866] Did your actual car hour operation fluctuate in the proportion that you indicate on this estimate here relative to the actual number of passengers that you handled during that normal period?

A. I can not answer that from the stand, I haven't the figures here.

Q. Well, there would be no difficulty about answering that because those are actual facts?

A. No, the figures speak for themselves.

Q. Would you say that these two, that is, this estimate and the actual car hours in relation to the number of passengers handled correspond?

A. I would not know without referring to the actual results.

Q. And you haven't enough knowledge or acquaintance from experience as the head of the concern to say whether or not this relationship that you have indicated on this sheet would correspond to the actual experience of your Company one way or the other?

A. No, this exhibit was made on the basis that car hours would vary directly with the riding.

Commissioner Clark: That gets back to my original question.

Commissioner Sachse: In other words, it was made on an entirely theoretical basis, wasn't it?

A. Yes.

Q. And the basis for the exhibit was not the experience of your Company as far as relation of number of passengers and car hours is concerned, but it was what you considered were the trend of business activities in the City of San [fol. 867] Francisco as determined by some Chamber of Commerce index is concerned?

A. Yes, I used that because the Commission itself, I think, used the Chamber of Commerce index in its exhibit.

Commissioner Clark: In other words, then, from a value standpoint you gave no credit to the showing here in improved load factor at all?

A. Well, no, such an improved load factor is now under conditions that do not obtain normally.

Commissioner Sachse: I was just going to develop that a little more if I may.

Now, let us go beyond that period that you have said you considered normal. In other words, let us go into the war period where this great increase in business has occurred?

A. Yes.

Q. Is there any relation now between the number of passengers carried and the service standards that you have depicted here expressed in so many car hours for so many passengers?

A. Well, as I say—that is what I qualified my answer awhile ago on, normal and abnormal periods. Right now, we, in common with practically the whole transit industry, are faced with more people to carry, and we will continue to be faced with those extra passengers so long as there are

restrictions upon the use of gasoline and rubber. After those restrictions are removed our patronage, we think, will decline to pre-war levels.

[fol. 868] Q. If I understand your answer the answer is "no", there is no relation now, because of the war activities between the standard of car hours and the number of passengers handled?

A. No, that is not the answer either. We have to qualify that because our first consideration during these abnormal periods must be given to the war workers. We have directives to that effect.

Q. Well, I did not make my question clear. I am, Mr. Kahn, I am simply asking you whether this standard that you have assumed here that a certain number of car hours are required to haul a certain number of passengers, in other words, that a certain expense is required, measured by car hours, so many dollars or so many cents per car hour fixes the expenses of so many passengers handled, that is the standard you use here. Now, I ask you whether that standard has any relation today, that standard under present traffic conditions?

A. Under abnormal conditions I should say it had no relation, but I haven't brought this exhibit down to the present day, either.

Q. That is correct.

A. This exhibit only involves the years '37, '38, and '39 which were the periods under consideration at the time this Commission gave our applications a hearing.

Q. But if we should find that even under the normal period that you have, that you intend to cover in this exhibit that so-called standard has no relation to what your [fol. 869] Company actually did, then we are justified in concluding that the actual conditions are neither represented for this so-called normal time by this exhibit nor are they in any way represented by the abnormal time during the war.

A. They are not during abnormal times, we do not think they are, but, during normal times, while this exhibit is purely an estimate, you have to have some reasonable application of making an estimate or no estimate can be made intelligently.

Commissioner Clark: Could I ask a question?

Commissioner Sachse: Certainly.

Commissioner Clark: Is it your contention as a transportation engineer that during normal times, during the period which this prophecy was made, this projection was made, that if you had 19½ per cent increase in passengers that wanted to ride that you mean that your average car hours would be 19½ per cent increase also?

A. I should think that would generally be—at least it may not follow precisely, but the trend would be that way.

Q. If your opinion was asked as a traffic engineer, traffic engineer counseling with the Company would it be your statement in your best judgment if you had a 19½ per cent increase in traffic, whatever the cause might be, that they should make provision for 19½ per cent increase in car hours?

A. Yes, I can only repeat if the trend was developed, why, the Company would have to provide for more service. [fol. 870] Now, as to whether 19 per cent increase in car hours would precisely equal the 19 per cent in increased traffic I am not prepared to say that would be the exact percentage, but it would approximate that percentage.

Q. In your engineering recommendation, based on experience, can you tell me a single instance in your years of experience or observation that such a condition has resulted?

A. Well, I think it results in practically every street car company as the patronage is increased is obliged to add to its service.

Q. That is a general statement, that is not an answer to my question. The question really gets down to engineering, if you have a 19½ per cent increase do you think it is reasonable to assume that you would have to have a 19½ per cent increase in car hours to handle that induced traffic? You would—don't you agree that you would have an improved load factor likely resulting from that increase?

A. Improved load factor?

Q. If along a given right of way you had a 19 per cent improvement in travel conditions, that is, as far as those who wanted to ride, or an increase of 19½ per cent in load, don't you believe you would have an improved load factor on that particular phase of the transit system?

A. In normal times?

Q. In any time?

A. In normal times I think the increase would be spread over the day following the same pattern as the normal

[fol. 871] pattern; in abnormal times I do not think any of those rules hold.

Q. You do attach some importance to load factor in establishing your schedule, do you not?

A. Well, when you say, "load factor" I never thought about it in just that way. We think more in terms—we think in two terms. We study traffic conditions of our system and try to fit our schedule to suit the needs of the people; that is one thing. The other point in designing the service is to take cognizance of the afternoon peak hour, which is the most difficult part of the day to serve people. Now, we have to relate one study to the other in designing our traffic system; in fixing our schedules.

Commissioner Sachse: I think we are getting the record very much confused; I do not know whether I will be able to assist in making it clear.

Q. Mr. Kahn, if you have a given traffic, I do not care what it is, and you handle that traffic with a given number of car hours, and again I do not care what number of car hours you use, and you have, at that time, under those conditions, a 50 per cent load factor, we will say. Then you increase your load factor, you double it, but you also double your car hours, your load factor does not change at all, you would have still exactly the same load factor.

A. Same load factor.

Q. That is the method you have used here, isn't it, you [fol. 872] have allowed additional car hours for, you might say, literally, every additional passenger that has come on, haven't you?

A. Under this method, yes, and I have taken off car hours as the traffic decreases.

Q. Yes, sure. In other words, you have made no allowance whatsoever that you can handle, with the same number of car hours, that means cars running on a certain schedule operated by a certain number of men, that is what car hours mean, that you can handle no more passengers than you handled on that particular base period which you call 100 per cent, that is right, isn't it?

A. Well, we have pro rated the car hours directly in accordance with this traffic study.

Q. Now, another question. In the first—in the second line of this schedule, last page of the exhibit which has not as yet been numbered, you show that you did have a

loss in net income, both under your estimate of what would have happened and the actual net income was even more in the red than under the estimate that you have shown on this exhibit. That is correct, isn't it?

A. No.

Q. In other words, the actual net income was \$48,442.36 in column, while the estimated—corresponding estimated net income under the 5-cent fare would have been \$12,704.04?

A. Yes, if you qualify your statement as having reference to the last 6 months—rather to the first 6 months of 1938, you are correct.

[fol. 873] Q. I am taking the period that you show there. In other words,—

A. You said “actual” I think, without relating—referring to any year.

Q. To make it clear, then, I meant to refer to the 6 months period of 1938. In other words, this period shows that you would have been better off under the 5-cent fare than you would under the actual fare that was charged. Now, I understand your testimony is that the reason for that showing is that during that period the 5-cent fare, plus the 2-cent transfer charge, was in effect at least part of the time, that you thought that was—that is not a good fare?

A. No.

Q. That is a correct statement?

A. Yes.

Q. In other words, while there was a paper increase by reason of the 2 cent transfer charge the facts show that traffic fell off to such an extent that the paper increase did not overcome the falling off in traffic. Correct?

A. That is right.

Q. Did I get your testimony to be that if there had not been that kind of fare in effect and, instead of that the 7-cent fare had been in effect, that then you would have had a real increase out of the 7-cent fare?

A. I did not testify to that effect, for the first 6 months of 1938, but it is my opinion that had the 7-cent fare been in effect during the first 6 months of 1938 we would have [fol. 874] fared much better in net income, as we did in 1939.

Q. Why do you think, Mr. Kahn, that under these normal periods—and that is what you say these periods are shown on this exhibit—you could have—you could ever have attracted to the Market Street Railway under a 7-cent fare

a sufficient number of passengers to offset that loss in traffic that did occur in the early period when the Municipal Railway could take care of all the passengers it actually carried during those periods? In other words, where would that additional revenue have come from if the 7-cent fare had been in effect during the normal period before the war traffic over-burdened all your transportation facilities, regardless of fare? Where would the traffic have come from?

A. Well, I do not know as I quite understand your question, but we do not have to enter the realm of speculation for the first 6 months of 1938, because the 7-cent fare was in effect during the first 6 months of 1939, which was also a pre-war year, and it did improve the net income of the Company materially, in fact, it improved it sufficiently to enable the Company to meet its pressing obligations and thereby kept it out of bankruptcy.

Q. That is what your statement is, but that statement is only made because you assume that under the 5-cent fare you would not have held more people to produce sufficiently—more people to produce at least as good a result as the 7-cent fare actually did produce, isn't that right?

[fol. 875] A. Well, that is not only my opinion—yes, that is my opinion, that is quite true, and I must say that this Commission agreed with me, otherwise it would not have authorized an increase in fares.

Q. I am not sufficiently familiar with the record in that proceeding. If Mr. Hunter or some one else, or you, Mr. Kahn, can answer I wish they would, were the estimates made in that record of what, in the Commission's opinion, the 7-cent fare would produce after its taking effect, over a period of time?

Mr. Hunter: Yes.

Commissioner Sachse: Those estimates are available?

Mr. Hunter: They are in the old file.

Commissioner Sachse: I would make the suggestion and the request that, in order to test the soundness or the reasonableness of this estimate, and in view of Mr. Kahn's statement that the Commission agreed with him at the time, that this exhibit that showed what, in the Commission's opinion, the 7-cent fare would produce, be made part of this record because we do know what the 7-cent fare did produce. There is no argument about that. But we do not know what, in the Commission's opinion, or in

the staff's opinion, the 7-cent fare was supposed to produce, and, of course, it can only be on that estimate that Mr. Kahn makes his statement that the Commission agreed that the 7-cent fare would be better than the 5-cent fare.

[fol. 876] A. It authorized the charging of the 7-cent fare, that is why I am assuming it agreed.

Commissioner Havenner: If there is no objection—

Mr. Cassidy: I think perhaps Mr. Hunter had better identify the specific exhibits that you have in mind so that there is no question as to what is being considered.

Commissioner Sachse: My suggestion would be they introduce those in evidence here or refer to them.

Mr. Hunter: I remember Mr. Kahn made some estimates.

Commissioner Sachse: We would like to have those too.

Mr. Hunter: I think that was his showing before the Commission, that that is an estimate as to the traffic that would flow with the 7-cent fare, is that right, Mr. Kahn?

A. I have forgotten just what those fares showed except that I do remember the application was merely for—was for an increase in fare to meet our increased expenses, which were largely labor and taxes at that time, and we ought to have some relief; that is the only way we could get relief.

Mr. Hunter: We will review that file.

Commissioner Havenner: Take a brief recess at this time. (Recess.) The Commission will be in order. If there is no objection the exhibit which has just been discussed, consisting of 8 sheets and a cover entitled, "Study to determine the net income of the Company for the first 6 months of calendar years 1937, 1938 and 1939 if a 5-cent fare with free transfers had been in effect" will be received in evidence and marked Exhibit No. 22.

[fol. 877] Mr. Cassidy: If the Commission please in connection with the last few questions asked of the witness Kahn I would suggest that there be—that Decision No. 31,472 in Application No. 21,115, decided in 1938, be deemed a part of this record by reference.

Mr. Appel: I have no objection to that, in fact, I was going to introduce the fourth supplemental opinion and the fifth supplemental order.

Mr. Cassidy: Fine. Then,—

Mr. Appel: I have the necessary copies of both.

Mr. Cassidy: That will take care of it, Mr. Appel.

Mr. Appel: Yes.

Mr. Cassidy: Now, mention was made of certain studies that had been introduced in the 1938 proceeding and I understand that two of those exhibits were introduced by Mr. Hall, being Exhibits 45 and 46 in Application 21,115, and three exhibits were introduced by Mr. Kahn in the same proceeding, being Exhibits 6, 17 and 23. All of those exhibits are in terms of money by the various lines, and in order that the record may be complete I would suggest that those 5 exhibits be deemed a part of this record by reference.

Mr. Appel: We have no objection.

Mr. Holm: I wish to thank the Commission and counsel, likewise Mr. Kahn, for permitting us to call Mr. Cahill out of order.

Mr. Cahill: Will you take the stand, please.

[fol. 878] EDW. G. CAHILL, Recalled.

Direct examination:

Commissioner Havenner: You have been sworn in these proceedings, Mr. Cahill?

A. I think so, yes.

Mr. Holm: Yes.

Q. Mr. Cahill, this morning the Commission expressed the wish that you appear and make part of the record your experience relating to the manpower situation in so far as it relates to the Market Street Railway,—

Mr. Appel: The Municipal Railway?

Mr. Holm: The Municipal Railway is concerned? Have you prepared a summary showing that situation?

A. Yes, sir.

Q. You have, Mr. Cahill?

A. Yes, I have.

Q. And is the one that you have in your hand the result of the study you have made?

A. Yes.

Mr. Holm: Will you kindly distribute three of those copies to the Commission? Mr. Beck will distribute the other copies.

Q. Kindly refer to that document that is entitled, "Public Utilities Commission Municipal Railway" beginning with the sub-title, "Platform personnel" and go into it in as much detail as you deem necessary.

A. We had a maximum shortage as of November, 1942, of 110 motor men and a hundred conductors, making a total of 210 platform personnel shortage.

The shortage as of September 15, 1943, was 60 motor men, [fol. 879] 20 conductors, making a total of 80.

The reduction in the number we are short came about from several things. No. 1, the wage scale of motor men and conductors and street car operators was raised as of July 1st, 1943, 5 cents per hour, making an entrance pay scale of \$6.80, second 6 months \$7, third 6 months \$7.20, thereafter, \$7.40 per day. We also raised the pay scale of new employees paid as trainees from \$3 to \$6.80 a day; bus operators were raised 2½ cents an hour for the first 6 months, 5 cents for the second 6 months, 7½ for the third 6 months, 10 cents for the fourth 6 months.

We compensate time worked in excess of 8 hours per day and 48 hours per week at 1½ times the rate of daily pay the particular individual receives and we pay 10 cents an hour to men who instruct employees for the work of instruction in addition to their normal wage scale.

Another reason why our shortage of men was cut down was because of the fact that the Public Utilities Commission spent over \$13,000 for newspaper and radio advertising. The net result of that advertising, plus the wage scale, plus the fact that we pay a lot of penalty time, as much as \$7000 in one month for overtime worked, which \$7000 per month is divided up among the platform personnel and amounts to a wage scale raise of from 8 to \$10 per month each is the reason, in my opinion, why we have a lesser manpower shortage now than we had in November, [fol. 880] 1942, when we started advertising and before the wage scale was raised.

Q. You began your advertising in November, 1942, and you have continued down to date, have you, Mr. Cahill?

A. That is right, and we will continue it in the future until we have a full crew.

Q. Now, what other benefits accrue to the employee of the Municipal Railway than you have mentioned?

A. What other benefits?

Q. Yes, sir.

A. You mean in the way of working conditions?

Q. Yes, sir.

A. Well, the basic hours of their labor, according to the charter of the City, shall be 8 hours to be completed within 10 consecutive hours, that is, the range time is 10 hours. They get one day of rest each week of 7 days and all labor performed in excess of 8 hours in any one day or 48 hours in any one week is paid for at the rate of time and a half. They also get, after one year's service, a vacation with pay of two calendar weeks annually as long as they continue in the employment of the City.

In addition they get sick leave with pay; it amounts to two weeks allowance annually, and that is in addition to their vacations with pay and that, if not used in any one year, is cumulative up to and including 6 months in the course of their employment.

Those are their working conditions and I have already [fol. 881] stated the pay scale.

Q. Yes. Now, what is the situation as to women employees? Have you in mind how many you have employed?

A. I do not know how many we have. We have a good many.

Q. Now, Mr. Cahill, since you were asked to appear this afternoon Mr. Kahn testified before the Commission and, if I recall his testimony particularly on this point I am about to allude to, it was to the effect that he, Mr. Kahn, felt the suggestion he made was far more equitable and would result in better service to San Francisco than any suggestion that you had made in behalf of the Municipal Railway to his Company, particularly the suggestions made by you as to the rental of the use of the inner tracks on Market Street and certain equipment of the Market Street Railway, Mr. Kahn's suggestion, if I can epitomize it correctly, was to this effect, that the Municipal Railway should abandon the "N" line and that the Market Street Railway would be permitted to operate a substitute line over those rails, through the Duboce Tunnel, resulting in the Municipal Railway having 31 more of its cars to spread out over the remaining portion of its system.

Now, Mr. Appel, do I fairly state what Mr. Kahn testified to or——

Mr. Appel: Substantially what the suggestion was that Mr. Kahn made.

Mr. Hunter: Was there a substitute for that, the No. 6, [fol. 882] in that suggestion?

Mr. Holm: There was, rather a—the record was rather indefinite as to that. Mr. Kahn said he had not quite considered whether the line 6 would be rerouted or it was to be a substitute line. He had not, I don't think, cleared the record particularly on that point.

Mr. Appel: That suggestion came from me, Mr. Hunter.

Mr. Holm: Now, you have never heard of that proposition before, have you, until it has been mentioned here?

A. No, this is the first time I ever heard of it.

Q. Are you aware that the Duboce Tunnel, of course, was constructed through funds that were raised by an assessment district imposed on the people whose lands were within that district, who would benefit by the construction of that tunnel?

A. Yes, that is right, the people at both ends of the tunnel were assessed for the cost of the tunnel. That was not a cost borne by the entire city tax payers.

Q. And the tunnel itself serves but one purpose, doesn't it, namely, that of carrying through it street railways?

A. That is right.

Q. And the people who suffered that assessment on their property were supposed to have enjoyed the benefit by reason of the operation of the Municipal Railway through this tunnel at a fare fixed at 5 cents?

Mr. Appel: I object to that. Calls for an opinion and conclusion. I do not believe there is any such legislation [fol. 883] ever passed, or, in particular, that there is any charter provision——

Mr. Holm: What is your understanding, if you have any understanding on that?

Mr. Appel: —if it is we can argue as a question of law later on.

Mr. Holm: —as to the purpose of the construction of the Duboce Tunnel, let us put it that way first.

Mr. Appel: I object to that on the ground it calls for an opinion and conclusion. I do not think we should go that far afield, if the Commission please.

Mr. Holm: Well, now, if the Commission please, Mr. Kahn testified to this effect: He felt that he, as President of the Market Street Railway, had an equitable proposition to submit to the Commission, that by the Municipal Railway abandoning its No. "N" line that they would take over the operation of that line, allow the Municipal Railway to take 31 cars off and operate them elsewhere, with, of course, the assumption that the Market Street Railway would charge a 7-cent fare using this tunnel that was built by a special assessment district. The purpose of the questions I am asking Mr. Cahill, of course, is to illustrate to the Commission that that is not equity in any sense of the word.

Mr. Appel: Well, you misunderstood the whole proposition, Mr. Holm, because it amounted to this, as to whether the situation in the so-called bottle neck on lower Market [fol. 884] Street could be relieved, and this suggestion by Mr. Kahn was so that they could equalize the traffic on lower Market Street, which any other plan that has been suggested heretofore would not do in such equitable fashion.

Commissioner Havenner: We have admitted a good deal of testimony which was opinion on the part of the witnesses. Mr. Cahill can answer the question; the accuracy of his statement can be very easily confirmed by the Commission.

Mr. Holm: Devoting your attention to two matters, Mr. Cahill, as to the equities of such a proposition and as to what, if any, improvement might result in the service, which is the paramount thing before this Commission at this time.

A. I will answer the second one first, in my opinion there would be an improvement in the service, there is no question in my mind about that.

Q. Why do you say that?

A. Because it would transfer some of the outside traffic to the inside rails on Market Street at the bottle neck. As to how much of an improvement I would have to study the matter because I do not know exactly how many trips would be transferred from the outer to the inner rails by that proposition; I would have to check that. But there is no question that there would be some improvement.

Q. Well, I do not think that Mr. Kahn's offer contemplated that your 31 cars should come off of the outside

rails; just generally that should be distributed to some [fol. 885] other part of the Municipal System.

A. Well, then, I do not understand the situation. Is Mr. Kahn's suggestion that the 31 cars as operated by the—is it Mr. Kahn's suggestion that the cars which now operate on the "N" line be taken away from there and operated on other parts of the system of the Municipal Railway and that the Market Street Railway cars be run on the inner tracks on Market Street out through Duboce Tunnel on the "N" line on Judah Street? Is that what Mr. Kahn's suggestion is?

Mr. Appel: For the purpose of equalizing the load on lower Market Street.

A. It would equalize it to some extent. Exactly how much I can not say at the present time. There is no question it would equalize it to some extent because whenever you take any cars off the outside tracks and put them on the inside tracks you benefit the service to a certain extent. Now, how much better that would be I can not tell until I have had a chance to study it.

Q. Well, now, while you are talking about service, compare the suggestions that you have made to the Market Street Railway with Mr. Kahn's suggestion, your suggestion—namely being that they rent some of the usage of the inner tracks for use of Municipal cars.

A. Well, my suggestion, in brief, is this: We have 1960—I can't remember the statistics, but we have a great many more car trips every 24 hours at the bottle neck on Market Street on the outside tracks than are run [fol. 886] on the inner tracks. Our suggestion was that I take enough of the outside track traffic at the bottle neck, which is about Sansome and Market Street, and put it on the inside tracks to equalize the load on the two tracks. That means taking a certain number of cars from the outside tracks of the Municipal Railway, and they would be Municipal Railway cars, and put them on the inside tracks until the load is equal on each pair of tracks.

Q. You had in mind, did you, that a trackage contract was to be entered into with the Market Street Railway upon some reasonable basis for the use of their tracks?

A. That is right.

Q. Now, then turning to the second part of this situation, if you can enlighten us in any way as to the equities as between the two plans.

A. The "J", "K", "L" and "N" lines all run out Market Street; they all run on a 5-cent fare. Under my plan they would continue to run out Market Street and to their destination all on a 5-cent fare. Mr. Kahn's proposal is to put a 7-cent fare on the "N" line, which is the Judah Street line to the beach so that one line, one set of people would be equalized to the extent of two cents per ride in each direction. In my opinion that is not fair, especially because of the fact that those people who patronize the "N" line were assessed for the cost of the Duboce Tunnel.

Q. Now, Mr. Cahill, your Municipal Railway is making a very substantial profit through this added load that you [fol. 887] are carrying, due to war conditions, isn't that true?

A. That is right.

Q. Has the suggestion ever been made to you that you might be in a position to reduce the fares of the Municipal Railway under what you were charging at present?

A. That suggestion has come to the Public Utilities Commission.

Q. It has? And was the suggestion generally that you should sell 6 tokens for a quarter? Was that the general suggestion?

Mr. Appel: I object to that as utterly immaterial. This Commission has no jurisdiction over the fare structure of the Municipal Railway.

Mr. Holm: For comparison purposes. You have asked us to come in here and tell you.

Mr. Appel: We have not asked you to come in and tell us, Mr. Holm, you misunderstood.

Mr. Holm: We are here at the invitation of the Commission, Mr. Appel.

Commissioner Havenner: The question may be answered.

A. What is the question?

Mr. Holm: The question is that was that suggestion ever made and did you consider it, namely, the reduction of the present 5-cent fare and substituting 6 tokens for a quarter for these abnormal conditions?

A. Yes, it has been.

Q. Have you given it any thought as to what effect it [fol. 888] might have on the revenues of the Municipal Railway?

A. Yes.

Q. Have you given any consideration to the fact that if you had tokens to deal with with the passengers, rather than making change continually, that that might save man-hours and cut down your cost—cut down your shortage in personnel?

A. I do not believe it would have material effect on the personnel situation; it might have a little.

Q. Did you give any thought as to whether you would lose money if you were to reduce your fares to 6 tokens for a quarter?

A. Yes; the Municipal Railway would not lose any money, it would pay its operating expenses, depreciation could be funded and it would come out in the black.

Q. And that includes, of course, all of the serial bonds that are required to be retired?

A. Yes. That is a very small amount.

Mr. Holm: Now, I do not know, if the Commission please, what other information you wanted from Mr. Cahill.

Commissioner Clark: There was one question that I would like to have answered, that was in connection with the statement made that there was a difference between the working conditions imposed upon the Market Street Railway in relation to their employees, women employees as compared with that of the women employees entering Municipal Railway work. In other words, the contention being that the Municipal Railway could work their women [fol. 889] employees longer hours than was possible for the Market Street Railway. Are you familiar with that fact? I believe they stated they were limited to 54 hours in a—

Mr. Appel: In a week.

Commissioner Clark: 54 hours in a week?

A. What was the question, Mr. Commissioner?

Q. Are you restricted to 54 hours a week as far as women employees are concerned?

A. No, we work them 54 hours a week or more if they will work. Many of them do.

Q. And you pay time and a half?

A. Time and a half beyond 48.

Mr. Holm: I offer this tabulation prepared by Mr. Cahill, if it please the Commission, in evidence.

Commissioner Havenner: If there is no objection the one page tabulation entitled, "Public Utilities Commission Municipal Railway platform personnel," will be received in evidence and marked Exhibit 23.

Q. Mr. Cahill, do you attribute your reduction in shortage of platform personnel between November, 1942 and September 15, 1943, entirely to your advertising campaign?

A. No, I think I stated, Mr. Commissioner, that I attributed it to three things, the pay scale, the working conditions and the advertising.

Q. Did you offer an opinion as to which of those factors has been most important in reducing your shortage?

A. I think the pay scale.

[fol. 890] Q. The pay scale. Perhaps I ought to know, but my memory is at fault. Your pay scale is fixed in what way?

A. It is fixed by the recommendation of the Public Utilities Commission to the Civil Service Commission of San Francisco; the Civil Service Commission, in turn, recommend the rate to the Board of Supervisors who set the rate.

Q. There is no charter limitation on the rate of pay, then, I mean in dollars and cents?

A. In dollars and cents, there is none. There is a general statement of charter limitation.

Q. I do not know whether this is in the record, but I was informed that, due to some regulation imposed by the Civil Service Commission of San Francisco employees of the Municipal Railway, by certain voluntary acts, could now release themselves from the freezing regulations of the Manpower Commission, is that correct?

A. It was, Mr. Commissioner, that has been changed.

Q. It has been changed?

A. Yes, sir. They can no longer do that.

Q. As I recall it under this rule of the Civil Service Commission if an employee absented himself from his job for a certain length of time he was discharged, was that it?

A. He was automatically discharged. We had to take that up with the Civil Service Commission and that has been clarified, and the manpower situation, I would say, has

been materially helped by the war manpower Commission [fol. 891] edict that it is an essential industry and the men may not leave it for a non-essential industry or even for other essential industries without a clearance from the Railway which we do not give. The way that is handled is that we have a committee of eight men, four of them representing management, four of them representing labor and every man's demand to be released goes to that committee and that committee acts upon it and I follow the recommendation of that committee without any exception and up to date almost none have been released.

Commissioner Havenner: Any further questions?

Commissioner Sachse: Mr. Cahill, have you available the total number of employees, motormen and conductors, as of September 15, 1943, so that we can compare the shortage with the total number?

A. I am sorry I did not bring that figure, but I can furnish it.

Q. Will you be so good?

A. Yes, I will.

Mr. Hunter: May I ask Mr. Cahill a question?

Commissioner Havenner: Yes.

Cross-examination:

Mr. Hunter: Mr. Cahill, you show your rates of pay both in hours and per day. What is the situation where an employee works less than 8 hours? In other words, what is the significance of a day's pay in your exhibit?

A. Well, it was just—mostly it has no significance, it was just merely for my own information as to how much [fol. 892] it came to in a day, that is; on this sheet, you will find, the third line from the last, "Cost of paying full time on report time." Report time is a case in point, a man reports at the barn at the request of the management to take a car out in case some one does not show up. Those men are paid full time, although they are only there two or three or four hours. In other words, we pay them the full hourly wage whether they are working on a car or whether they are on report, and we pay them the full hourly wage when they are not working 8 hours in a day.

Q. In other words, it really is on an hourly basis, not a day basis?

A. It is really a per diem situation on an hourly basis.

Q. And do you extend also hospital benefits to your employees?

A. No.

Q. No medical service?

A. No, no medical service for them.

Mr. Holm: Mr. Cahill, they do belong to what is called a health service? They pay for that themselves?

A. That is independent of the City, Mr. Holm, yes, that they pay for themselves.

Mr. Holm: Deduction from their wages.

Mr. Hunter: That is all I have.

Mr. Appel: Mr. Cahill, in this matter of this committee of 8 that you talk about, you practically have your employees of the Municipal Railway frozen now, haven't you?

[fol. 893] A. That is right.

Q. And since that has taken place there has been a definite improvement in your manpower situation?

A. Correct.

Q. And you attribute that improvement in large measure to that situation, don't you?

A. I do not say in large measure, I would say that was probably the fourth reason. It is a reason for improvement, there isn't any question about that.

Q. One of the substantial reasons?

A. It is one of the four reasons. It is fourth in importance.

Q. Now, on this matter on lower Market Street, in order to remove whatever congestion there is there on the outer tracks it was your opinion it would be advisable to shift several lines of the Municipal Railway to the inner track?

A. I think two to equalize two lines.

Q. I think you mentioned three, if I am not mistaken, at the prior hearing. It makes no difference. It was more than one at any rate?

A. More than one, I think it was two.

Q. In the matter of the wages and salaries of the employees of the Municipal Railway you haven't any agreement with the labor union, have you?

A. No, sir.

Q. And, as a matter of fact you claim that you do not come under the jurisdiction of the War Labor Board in the matter of wages?

A. No, I do not claim that at all.

Q. Well, you have never submitted to the jurisdiction, [fol. 894] have you?

A. No, we have not.

Q. You have never consulted them in relation to what the wages in your industry should be?

A. No, sir, we have not.

Q. And likewise on this matter of the employment of the women employees, you have never come under or considered that you came under the provisions of the Labor Code in reference—or under the jurisdiction of the Division of Industrial Welfare of the State Department of Industrial Relations of the State of California?

A. That is right.

Q. And you have never, on the welfare end of it, considered the matter of working women over 54 hours a week, have you?

A. Yes, I have considered that and I do it whenever I can.

Q. That is, you work them over 54 hours a week?

A. Yes, sir.

Q. You do that because employment by the women is to their advantage as far as getting the time and a half is concerned, is that correct?

A. No, I do that because it is to the advantage of the service to get more service and therefore have employees there as long as they will work within reason. That is to say I do not want them to work 24 hours a day.

Q. But to try and conform to your schedules?

A. That is right. I am still short of manpower, I therefore use anybody that will work as long as they will work within reason.

[fol. 895] Q. But the fact remains that you have not placed any limitations on the hours that the women should work?

A. Well, there is a limitation on the hours everybody shall work, including the women, I do work them more than 56 hours.

Q. 54 hours?

A. 54 hours, as much as they will work up to about 60 or 65 hours.

Q. And the advantage that gives to each individual woman employee is the benefit of the time and a half?

A. That is their advantage and the railroad's advantage is in giving better service.

Q. Giving more service. And you have never applied to the Division of Industrial Welfare for permission to do that?

A. No, sir.

Mr. Appel: That is all.

Commissioner Havenner: How important in your total operations is this labor of women platform employees over 54 hours a week? Could you give us any estimate of it?

A. I could not tell you that, Mr. Commissioner, offhand.

Q. It is very important?

A. It is of some importance, I can not tell you how much.

Commissioner Clark: In the tabulation, Mr. Cahill, under "platform personnel" showing manpower shortage, that is based on how many hours a day?

A. Where is this?

Q. The first line, "platform personnel"?

A. Oh, yes.

Q. Is based—

A. That is shortage of people.

[fol. 896] Q. Well, I mean—

A. If every one worked 8 hours a day that is how much we would be short.

Q. 8 hours a day is the shortage?

A. 6 days a week.

Q. So that as of September 15th with reference to those individuals who showed up available to work 8 hours a day, the fact that some personnel is present has not been reflected here as a manpower shortage?

A. No, sir, it has not.

Q. You have submitted to the Market Street Railway some plan or plans that you believed, if adopted, would improve the street railway transportation service, in general, in San Francisco?

A. I submitted it to the Office of Defense Transportation and gave Mr. Kahn a copy of it.

Q. You have not submitted it, as you discussed the matter, to Mr. Kahn?

A. I think so, I am not quite certain.

Q. Has Mr. Kahn indicated a willingness to accept it, subject to the approval of the Commission?

A. I am not sure whether I ever discussed it with him, Mr. Clark, so I do not know. As far as I know he has not indicated his willingness to accept the suggestions.

Q. But that that you submitted, though, you believe the result of that would be beneficial?

A. No question about that in my mind.

Q. You feel it is equitable and fair to the Market Street Railway?

A. I think so.

Commissioner Havenner: Is that plan in the record at this time?

[fol. 897] Mr. Appel: It was mentioned when you were not here last time, Mr. Commissioner.

The Witness: I can send you a copy of it, Mr. Commissioner, if you want.

Commissioner Clark: When was that submitted to Mr. Eastman?

A. I can not remember the date, but it was several days ago, and I will send the Commission copies of the plan.

Q. Do you have any communication from that Division as to—

A. They have not said anything about it at all.

Q. You still believe that it is needed, would be applicable and it has value?

A. Yes, sir.

Commissioner Havenner: Any further questions of Mr. Cahill?

Mr. Appel: The fact is, Mr. Cahill, that the Municipal Railway could use those cars after they were taken off of lower Market Street on other lines that are now being carried to capacity, couldn't they?

A. I do not know that we could use the whole 30, but we could certainly use 20 of them.

Mr. Appel: That is all.

Mr. Holm: Thank you, Mr. Cahill. That is all.

Commissioner Havenner: Thank you very much, Mr. Cahill.

Commissioner Clark: I understand Mr. Kahn was to resume the stand?

Mr. Appel: Yes, sir. Shall we go right ahead?

[fol. 898] SAMUEL KAHN, recalled.

Cross-examination:

Commissioner Clark: I would like to ask Mr. Kahn a question in connection with Exhibit No. 20. Do I understand that this as it is now submitted as an exhibit here in evidence is as it was submitted to you by the representatives of the Labor Union that were then negotiating with you?

A. I will have to find Exhibit 20, Mr. Commissioner, to find out. I have it now.

Yes, that is a copy of the changes proposed by the Union.

Q. This was submitted by the Unions just as it is submitted here?

A. Yes, sir.

Q. Now, I understood that you referred to the fact that the wage situation affecting your railway was now being considered by the War Labor Board?

A. Yes, sir.

Q. Do I understand that this Exhibit as it now stands has been submitted to them as the proposal by the Union and that you are now considering, awaiting their action on this particular proposal?

A. I was not present when the Union made its presentation, but Mr. Newton was and he is better qualified to answer the question than I am. I think it was, but I can not state of my own knowledge.

Mr. Appel: Mr. Newton is present and will take the stand.

Commissioner Clark: Possibly, then, the other question [fol. 899] could be asked of him, that I would like to ask in connection with it if he is more familiar with it.

Mr. Appel: Be probably better addressed to Mr. Newton.

Commissioner Clark: I will wait, then, for Mr. Newton.

Mr. Appel: At this time I would like to introduce in evidence the fourth supplemental opinion of the Railroad Commission of the State of California on Application No. 21,115, Decision No. 31,472, and I would also like to introduce in evidence—did you give that a number or was it admitted?

Commissioner Havenner: If there is no objection the copy of the Railroad Commission Decision No. 31,472 in Application 21,115, will be received in evidence and marked Exhibit No. 24.

Mr. Appel: And in that same proceeding I would like to offer in evidence Decision No. 31,603, which is the Fifth Supplemental Order.

Commissioner Havenner: Without objection Decision No. 31,603, in Application 21,115 will be received in evidence as Exhibit No. 25.

Mr. Appel: In that connection I would like to read the first paragraph of this last exhibit in the record.

"Market Street Railway Company in its Second Supplemental Application, filed on December 14, 1938, advised the Commission that it had filed with the Board of Supervisors of the City and County of San Francisco [fol. 900] requests (1) for the repeal of the ordinances passed by said Board of Supervisors authorizing and permitting the operation of the so-called 'jitnies' in said City, as set forth in Section II of said Decision No. 31,472, and (2) to abandon the operation, in whole or in part, of street railway service as delineated in Section III of the order in said Decision No. 31,472. These filings were made pursuant to the provisions of Decision No. 31,472, dated November 23, 1938. On December 12, 1938, said Board of Supervisors denied said requests. Applicant may now place in effect on January 1, 1939, the fares prescribed in Section I of said decision."

Redirect examination:

Mr. Appel: Now, Mr. Kahn, go back to your testimony, what do you understand and mean by gross income in connection with street railway operation?

A. Well, gross income is a product of the number of passengers carried by the rate of fare.

Q. I take it when you say "number of passengers" you mean fare paying passengers?

A. Revenue passengers, yes.

Q. And in respect to the Municipal Railway when the Market Street Railway Company lost riders as a result of, or by the—withdraw that.

When the Market Street Railway Company lost riders in 1938 and 1939 did the Municipal Railway absorb all of those riders?

A. No, nor was it anticipated that it would absorb all the [fol. 901] riders because a careful analysis was made at

that time and on lines of Municipal Railway that paralleled those of Market Street Railway it was anticipated that a certain percentage of the riders would shift from Market Street Railway to Municipal Railway, but on other parts of the system which were non-competitive, such a shift of revenue passengers due to the increased fare was not anticipated at all.

Q. Nor did it take place?

A. No.

Q. Now, in connection with Exhibit 22 that exhibit was offered with testimony here before Mr. Cahill took the stand before the recess. Is there anything further that you desire to state in reference to the power obligation or power bills of the Company? It is not directly in the exhibit there, but it is in relation to your testimony and the obligations of the Company.

A. Well,—

Q. At the time that you were applying for this increased fare.

A. The statement with respect to unpaid power bills antedates any application to the Commission for an increased fare.

For more than 10 years prior to 1942, and, of course, that would be at least 5 years prior to 1937 at the time the first application for an increased fare to this Commission was made, the Company was in a desperate financial condition and there were times during that period when it could not pay certain of its pressing obligations. It enjoyed no [fol. 902] credit, it was powerless to borrow money anywhere, so the only way it could finance itself was by ceasing to pay its current bills for electrical energy to operate its system, which it purchased from Pacific Gas and Electric Company, and for a period of 5 or 6 months it did become delinquent in the payment of its power bills. The debt at its maximum reached a figure of well over \$600,000 which the Company was unable to liquidate in its entirety until March or April of this year.

Q. Were you compelled to pay interest upon that obligation?

A. We were compelled to pay interest at the rate of 6 per cent per annum. But when you are in such desperate financial conditions you have to obtain money at a rate that the borrower specifies, not, perhaps, the regular banking rate.

Q. Now, Mr. Kahn, is there any assurance of continuance of the present income of the Market Street Railway Company, or is that income, in your opinion, just temporary in its nature?

A. There is no doubt in my mind but that the income is purely temporary in nature and I think there is a substantial amount of patronage will leave the Market Street Railway and the Municipal Railway Company, for that matter, as soon as the restrictions on the use of gasoline and rubber are lifted.

Q. Now, prior to Pearl Harbor, that is, December 7, 1941, what, if anything, was done by the Market Street Railway [fol. 903] toward modernization?

A. Well, the Market Street Railway Company began the program of modernization years before that time. Really, its first step in this direction was in the year 1935 when it acquired some electrically operated trolley buses to operate on the so-called Harrison Street line. It selected the trolley buses at that time for two reasons, the first being a step toward modernization and the second it enabled the Company to study the operation of this type of vehicle.

After operating these buses for awhile, these trolley coaches, rather, for awhile, we finally determined that our next step in modernization, which occurred in 1939, be gas driven coaches for the reason—for two reasons, first, overall cost of the coaches was somewhat less; largely because gas coaches required no overhead trolley system to be constructed. The second reason was that a gasoline driven coach was more flexible than an electric trolley bus for the reason that the latter can follow the path of its own trolley system, whereas the gas coach can operate anywhere it is permitted to run.

So, in 1939 and subsequent years we acquired 118 new gas driven buses at a cost approximately a million and a quarter dollars and they have since been running on the streets, running on the streets right now.

Q. You did not pay cash for those buses?

A. No, we had no cash to pay for the buses. We purchased [fol. 904] at that time on a plan of deferred payments. The only reason we quit buying buses to continue on our program of modernization was due to the fact that our manufacturers were devoting their entire plant to war production and they ceased the delivery of such vehicles to street car companies entirely. As a matter of fact the

manufacturer cancelled an unfilled order that we had placed with him some months before for additional equipment.

Q. Did you obtain permission from the Railroad Commission to purchase those particular buses?

A. Yes.

Commissioner Clark: May I ask, have you any unfilled orders that you now have on file with any company manufacturing buses?

A. No, sir, it is useless for us to place orders right now because we can not get the equipment.

Q. Wouldn't it maintain you in a preferred position from a priority standpoint?

A. Well, I am not so certain of that nor have I been assured by the manufacturer's representatives that it would give us a preferred position. We have improved our—I might say our modernization program somewhat by equipment leased from the United States Navy. We have a fleet of 16 buses we are operating right now that belong to the Navy which we have under lease that—and that augments our service in operating equipment which we own.

Commissioner Havenner: This order that you refer to as having been cancelled by the manufacturer, was that the [fol. 905] only order that you had placed prior to the war emergency? Did you have any other orders placed prior to the present emergency which are still not cancelled?

A. No, we buy our buses all from one—we buy all of our buses from one manufacturer.

Q. The Commission was informed this week that the Los Angeles Railway Company was expecting very early delivery of some buses that it had ordered prior to the war emergency—street cars, that is right.

A. I would have been surprised had it been buses because—

Commissioner Clark: What Company do you buy from?

A. General Motors.

Q. Why do you confine your purchases to one source? For purposes of uniformity?

A. Well, that is one purpose, the purpose of uniformity. Then, besides, we have a contract with General Motors; it is really Yellow Truck and Coach Division of General Motors, to purchase all our equipment from it.

Q. Is there any related interest in ownership between General Motors and your Company?

A. No, sir, not one bit.

Commissioner Havenner: Has the Company definitely formulated plans for the continuation of its modernization program after the emergency?

A. Well, of course, we will continue modernization in so far as our means permit, but we have no cut and dried program largely for the reason that we do not want to [fol. 906] make a commitment at this time for certain types of equipment when we think that there is a real possibility that, in the development of the art, something may be given to the public which will make the present equipment somewhat obsolete. In other words, before we make a commitment again we want to be certain that we are getting the latest type of transit vehicle.

Commissioner Clark: When could you be sure that you were getting the latest type?

A. I do not know. I think we will have to wait until the war is over and until the manufacturers have entered the field again, and at that time determine what it can produce. I was reading recently that, so far as passenger cars are concerned, General Motors when it does return to the manufacture of such cars, will produce 1942 models temporarily until it can design and retool for more modern machines.

Commissioner Havenner: Have they plans for a more modern machine now?

A. I do not know that of my own knowledge, I only read a small article relating to that matter the other day. It was a newspaper article.

Commissioner Clark: You do not then, have any fully developed plan, crystalized, ready to proceed with, that would make possible substitution of bus equipment for—or any other improved type of equipment for that which you are now operating?

A. We have no developed plan, no. We discussed—discuss the situation once in awhile. It is in the conversation [fol. 907] state right now. But we have no blueprint of a plan for the future.

I think that we can continue—generally speaking I think we can continue our program of modernization on secondary and feeder lines; I am not so certain at this time whether

we can substitute the buses for the trunk lines of street cars or not. That remains to be seen.

Mr. Appel: Mr. Kahn, this matter of the trolley coaches of the trolley coaches, Market Street Railway Company was probably the pioneer on the Pacific Coast, wasn't it?

A. I do not think it was probably the pioneer, it was the pioneer.

Q. And where you have put trolley coaches and motor coaches on the streets those have been offered to the public in lieu of street car transportation?

A. Oh, yes.

Q. Now, the subject was brought up here at one of the other hearings with reference to leasing the Company's properties for the purpose of consolidated operation. If the Company leased its property for the purpose of consolidating the operations in San Francisco here would the rentals have to be returned as income?

A. Yes, the rentals, under such an arrangement, would be classed as income and taxed accordingly.

Q. And under that plan the Company would be required to pay large income taxes?

A. Yes.

Q. And that would, of course, limit the return to the [fol. 908] Company and for that reason it is impractical?

A. Impractical. That first came up in the year 1940 when the City officials began taking over—began talking about taking over the property of the Market Street Railway Company to consolidate with the City's Municipal Railway and it was suggested at that time that the property might be acquired under what was called a lease-purchase arrangement.

Well, it was subsequently determined that the money paid under such an arrangement for the property would be classed by the Federal Income Tax Department as earnings and taxed accordingly and the contemplated purchase price would not be realized out of a sale under those conditions at all.

Furthermore, I do not—it was the opinion of our Attorneys that the City could not enter into such an arrangement unless the agreement savored of being a conditional sales contract and if it were considered a conditional sales contract the City, under its charter, could not enter into such an arrangement.

Commissioner Clark: I would like to ask the City representatives of the City is prohibited from leasing from the Market Street?

Mr. Holm: What Mr. Kahn had in mind was the question that the City would be obligated—obligating itself to incur an indebtedness beyond the fiscal year, which is a constitutional inhibition.

[fol. 909] Commissioner Clark: You would not, at least, from month to month?

Mr. Holm: No, we could do that.

Commisisoner Clark: Is there any difficulty, from an income tax standpoint, of where the maintenance of the equipment would be carried by the Municipal Railway as a direct operating expense? You have the benefit of the depreciation against that item. I do not see where the income tax angle enters at all.

Mr. Holm: At all events it is decidedly a moot question now because it is out of the picture entirely.

Mr. Appel: The rent would have to be returned as income, any rent that the Market Street Railway received.

Commissioner Clark: That which would be equivalent to rent, where you would be using those cars in the service.

Mr. Appel: But not only rental of the property, but also this would be held as income because it is going in on the basis of rental of the whole property after consolidation.

Commissioner Clark: Oh, pardon me, I thought it was in connection with the rental of certain equipment.

Mr. Appel: I have no further questions of Mr. Kahn.

Commissioner Havenner: What income taxes does the Company pay at this time?

A. We are accruing, for the year 1942, a substantial sum for income taxes. I can not tell you whether it is going to be two hundred thousand or three hundred thousand because the tax experts have not determined that for [fol. 910] the Company at this time. But we have set up already in the seven months, which we have covered by reports, a sum well in excess of a hundred thousand dollars.

Q. Your estimate was that if this leasing arrangement that is discussed has been entered into that your tax on that income would have been greater than you are now obliged to pay on your current operations?

A. Yes.

Commissioner Clark: Returning to Exhibit No. 21, or 20, which evidently Mr. Newton is more familiar with, however, it was introduced through you, and in connection with which you made statements, I would like to ask you this question, I think you stated that if you had been obliged to pay your employees in accordance with the demands made by this agreement as represented by this exhibit it would have cost you about a million and a quarter a year more for your labor, is that correct?

A. Yes, sir.

Q. The fact that you made that statement in this exhibit as introduced, are we to understand that you are confronted with that actual condition, that is, you will have to meet it?

A. No, I do not think we will have to meet—I do not think the ultimate outcome will cost us that much money.

Q. Why did you make that statement, where does it have any bearing on the situation if you are not going to be obliged to pay it?

A. Well, I do not know that we won't pay it. It is my judgment. I do not know that, but what—at least that is [fol. 911] the result of estimating the demands of the Union. Now, I can not state positively that we won't be required to pay all of that, but my judgment tells me that we will not.

Q. Is it your judgment that a matter that is now before the Labor Board that they would approve the conditions of this contract being made by your Company, that you are willing to do so?

A. That we are willing? No, we are not willing, but we might be obliged to.

Q. Well, one question in connection with that exhibit, possibly you can answer. I notice one of the conditions, page 5, "There shall be no layoffs of platform men because of additions to bus and trolley coach operations."

Would that mean that if this agreement were in effect it would be impossible while it is in effect for your Company to substitute trolley or bus coach operations for your present street car facilities?

A. No. What is the significance of that condition?

Q. The significance of that is that it takes two men to run a street car, one man to run a bus, and if we agreed not to lay off any employees because of substituting bus for street cars—

Q. In other words, you could satisfactorily substitute bus and trolley coach operations for street cars providing you had two men to the car—to the bus?

A. No, a bus only requires one man. But they specified [fol. 912] that no man shall be laid off because we are making such substitutions. In other words, every man is guaranteed a job. Now, there is a natural turn over of labor in a large group of men such as we have, there is a certain percentage die every year, or a certain percentage quit to take other jobs, and they may not be replaced, but no man would be discharged because of the change of equipment.

Mr. Hunter: Mr. Kahn, is it your position that as soon as conditions permit that you would contemplate modernizing your system?

A. Yes, we intend to continue our program of modernization.

Q. And does that contemplate the use of the most modern types of street cars, such as PCC cars?

A. I can not say definitely whether it will be PCC cars or additional buses at this time.

Q. It will, however, involve the most modern equipment that seems to be appropriate for the particular operation?

A. Yes.

Commissioner Clark: What do you understand, Mr. Hunter's question to mean where he says, "as soon as conditions would permit" and your answer was "yes"?

A. As soon as equipment is available again for street car companies, that is the first thing, and the second thing if we have the money and credit to purchase such equipment.

Commissioner Havenner: Do your studies of the future enable you to predict what percentage of the present street [fol. 913] car operations will be continued permanently after the war is over?

A. Well, the only thing we can figure on is riding settling back to pre-war levels, plus a reasonable percentage for an increase in population.

Q. I don't think I made my question clear. I meant in your plans for the future what percentage of rail operations do you expect to continue permanently?

A. I see what you mean. I do not know as I can express that in a percentage. I said awhile ago that it is possible that we will not be able to substitute buses for street cars on our so-called trunk lines. But even that view is subject to modification when we see what kind of equipment is developed in the future.

Commissioner Clark: What percentage of your stock is owned by other than California residents?

A. Oh, I do not know. Our stock is scattered all over the United States. The one large stockholder is the Standard Gas and Electric Company, which owns 39 and a fraction per cent of the stock.

Q. 39?

A. And a fraction per cent.

Mr. Cassidy: If the Commissioner will refer to Exhibit No. 10, Table 1-1, the 10 largest stockholders are there listed.

Commissioner Clark: Do you believe that your parent company is intimately familiar with the local conditions here other than through your representatives, Mr. Kahn, [fol. 914] may I ask that question? In other words, my point is to what extent are your recommendations followed by reason of their familiarity with your requirements out here and to what extent do they control, from the standpoint of being disinterested in the matter physically, but still financially in control? My point is, do you have full control as far as operations are concerned?

A. Yes.

Q. And your local directorate?

A. Yes.

Q. Do you believe that when the time arrives that you personally feel that there should be an improvement made in the type of service here that the owners of this 39 per cent and a fraction of stock will comply with your requests?

A. They always have in the past and I think they will in the future. As a matter of fact I do not know how much longer Standard Gas and Electric will be permitted to own this block of stock because under the so-called "death sentence" of the holding companies it is only a question of time before they will be obliged to divest themselves of these securities.

Commissioner Havenner: Any further questions of Mr. Kahn?

If not, thank you, Mr. Kahn.

Take a brief recess. (Recess.) The Commission will be in order.

Mr. Appel: Shall I proceed, Mr. Commissioner?

Commissioner Havenner: Yes.

[fol. 915] Mr. Appel: Will you take the stand, please, Mr. Newton?

LEONARD V. NEWTON, a witness called on behalf of the Market Street Railway Company, being first duly sworn, testified as follows:

Direct examination:

Mr. Appel: Mr. Newton, what position do you hold at the present time?

A. Vice-President of the Market Street Railway Company.

Q. How long have you been connected with the Market Street Railway Company?

A. Since, July, 1936.

Q. And in what capacity?

A. Vice-President in charge of operation.

Q. Your profession is what?

A. Engineer.

Q. And what are your educational qualifications and experience, will you please state?

A. Graduate of the University of Illinois in June, 1913, school of Engineering. Since that time I have specialized in transportation work, done nothing else since leaving College.

Q. In various cities throughout the United States?

A. Yes, previous to my coming to San Francisco I was an engineer associated with the Byllesby Engineering and Management Corporation in Chicago.

Q. And your duties with the Market Street Railway Company consist of what at the present time?

A. Well, as I previously stated, I am Vice-President in charge of operations and, as its name implies, it has to do [fol. 916] with the operating of the Company.

Q. Now, Mr. Newton, you were present at all—or you have been present at all of the hearings in this proceeding?

A. I have.

Q. And you have heard this question of manpower shortage that has arisen?

A. I have.

Q. And would you tell us what efforts have been made to relieve the manpower shortage as far as the Market Street Railway is concerned?

A. Yes, Mr. Appel. I have prepared an exhibit on that subject entitled, "Manpower and employment."

Q. And with the exhibit before you would you be good enough to state—pardon me just a second, Mr. Newton, please. Maybe I had better offer this in evidence and then have Mr. Newton make his explanation so we can identify it in the record.

Commissioner Havenner: If there is no objection the document consisting of 8 pages and 13 attachments entitled, "Market Street Railway Company manpower and employment" will be received in evidence and marked Exhibit No. 26.

Mr. Appel: With Exhibit No. 26 before you would you be good enough, Mr. Newton, to tell us what efforts have been made to relieve the manpower shortage so far as the Market Street Railway Company is concerned?

A. Our efforts have been varied.

On page 4 of this exhibit you will find enumerated [fol. 917] "Help wanted advertising" carried in the various daily newspapers beginning with July 17, 1942 and ending with August 12, 1943. We ran advertisements 331 times in the four daily San Francisco papers shown, as well as certain out of town papers.

The total cost of that advertising was approximately \$8000.

In addition to that we ran during the month of May and June, 1943, some spot announcements over station KGO; 35 spot announcements were tried out. The cost was \$274.

Also we have been using posters in our street cars. Typical examples of these posters being photostated and made a part of the exhibit. We have also used outdoor signs on all of our Company buildings. A copy of photograph of a typical sign is made part of the exhibit.

Quite recently we painted help wanted advertising on one street car and on one coach. Incidentally, it has attracted considerable notice, it seems to have considerable pull.

On April 6, 1943, President Kahn of our Company offered an inducement in the form of a bonus to the employees of the Company. Under this plan each employee of our Company who brought in a new employee and the new employee remained with us for 60 days, was paid \$10 for each such employee brought in. This worked out quite well. As of the last count 50 new employees had been at-[fol. 918] tained through that source. In November, 1942, we began the practice of hiring part time employees. In other words, where we could not hire a man full time inasmuch as he was already employed if he was willing to work for us at hours convenient to us and to himself or herself we employed them on a part time basis. It worked out fairly successfully.

In July, 1943, the Company started paying beginners in student platform work the full rate of beginners' platform pay. This has had quite a beneficial effect.

I believe that covers the activities of the Company so far as attempting to gain new employees is concerned.

Q. Would you tell us whether or not the employment has progressively been better since the month of June this year, or otherwise?

A. Yes, it has been better since the first of June.

Q. What figures have you in that regard?

A. In June we reached our low ebb with a total of 1869 employees; July, 1915, August 1953, September 1949, so that there has been an improvement although there was a slight falling off, seemingly, between August and September, of 4 employees.

Q. Will you state whether or not it is the intention of the Market Street Railway Company to make full use of manpower whenever more is available?

A. Certainly.

Q. And just so as to clear the record on this subject, what has been done in reference to restoring one-man car [fol. 919] operation in order to relieve manpower shortage?

A. For the past several months we have been working with the Board of Supervisors, specifically the judiciary and public utility committees of the Board with the view of having placed on the ballot for the November election

an amendment to the one-man car, initiative car ordinance that would permit of the operation of one-man cars for the duration of the war only, or until the emergency, as determined by the Board of Supervisors, had ended, and the proposed amendment excludes one-man car operation from Market Street.

Q. What was the result of that effort on your part?

A. I regret to say that, up to the present time, we have been unsuccessful in having such measure placed on the ballot.

Q. And this proposed amendment was merely to let the people express themselves on that issue for the duration?

A. That is right.

Q. Now with reference to women employees would you state what limitation of hours of employment are on the Market Street Railway Company?

A. Through a permit of relaxation issued by the State Labor Commissioners, we are permitting women to work 54 hours per week, 6 days per week.

Q. Do the women employees generally desire to work in excess of 54 hours a week in order to enjoy the benefits of overtime pay?

A. Yes, they do. That is one of our difficulties, so many [fol. 920] of the women can not understand why we limit their hours of work to 54 hours a week, whereas, the Municipal Railway has no such limitation.

Commissioner Clark: When does overtime go into effect? How many hours?

A. $8\frac{1}{2}$, overtime at the rate of time and a half begins after $8\frac{1}{2}$ hours in the transportation department.

Mr. Appel: Now, in reference to working conditions of the Market Street Railway Company compared with the Municipal Railway of San Francisco, I assume that you heard the testimony that has been given in that behalf or in that regard, Mr. Newton?

A. Yes, I did hear that testimony.

Q. Well, the statement has been made that working conditions on the Municipal Railway are more favorable than those of the Market Street Railway. Is that statement entirely correct?

A. No, I do not believe it is, and, of course, I take it that when we consider working conditions as more favorable in one company than the other we are thinking in terms of favorable to labor?

Q. Yes, that is correct.

A. I think that the employees of our Company enjoy working conditions and union conditions not employed by the Municipal Railway and I would name No. 1, the Municipal Railway has no agreement, we have a 50-page agreement with our men; the Municipal Railway have no check-off system, about 40 per cent of their employees—

Q. Just explain for the record what that check-off system [fol. 921] is?

A. By "check-off system" we mean deductions for union dues and assessments are made from the paycheck by the employer; that is in effect in our Company, it is not in effect in the Municipal Railway.

We have a provision under the terms of which we pay a minimum of four hours time for a tripper, the Municipal Railway pays actual time for a tripper. Where we cause a regular man to wait to take out a tripper after his regular work, days' work is done, assuming that he has worked 8½ hours, he is paid time and one-half for waiting time, the Municipal Railway pay no waiting time except on report, and that is a different thing.

We are a little more liberal in paying men for turning in their cars, which is not a material difference. We pay 5 minutes time for turning in, they pay 2½ minutes.

It seems to me that in the Municipal Railway they have three advantages; namely, Civil Service protection, retirement and 12-day sick leave, and that is only—those are the principal benefits that they have that our men do not enjoy.

Q. Well, ours enjoy Social Security in lieu of the retirement, is that correct?

A. That is true, except that the Federal Social Security is generally a lesser amount.

Q. But there is a lesser deduction from the payroll as well?

A. That is true. They get what they pay for.

Q. And you did not mention the hospital advantages, if there are any, medical department.

[fol. 922] A. Our employees pay \$1.50 a month for hospital benefits, very low insurance premium, covering sickness and hospitalization, that is, doctor's care and hospitalization.

Q. Does that include surgery as well?

A. That includes surgery as well, and I agree that is a benefit that should be mentioned, Mr. Appel.

Q. And the employees are hospitalized in what hospital?

A. St. Francis Hospital.

Q. And a medical staff is maintained for that purpose?

A. That is true.

Q. That medical staff extends to every district in the City of San Francisco, does it not?

A. That is true.

Q. So, they have neighborhood service as well?

A. That is right.

Commissioner Clark: Does the Company make any contribution towards the maintenance of that?

A. The Company has covered deficits developed by the medical department's operation where the contribution of the employees have not been large enough to cover the operating costs.

Q. Do you have any record as to what that would amount to?

A. I recall I think about a year ago—I am giving this from memory—the contribution was in the neighborhood of \$6000.

Mr. Appel: Every year there has been some contribution, that is, by the Company, to make up a deficit?

A. I do not know if there has been a contribution every [fol. 923] year, Mr. Appel, but there have been contributions.

Mr. Kahn: I think there has been a contribution every year but one and the deficit this year, to date, is about \$9000, which the Company must assume.

Mr. Appel: Now, with reference to this matter of service the Railroad Commission forwards to the Market Street Railway Company such service complaints as they receive from time to time in reference to Market Street Railway Company's operations, is that correct?

A. That is true.

Q. And in that respect you have prepared an exhibit for the year 1943, a one-page exhibit? How many complaints, service complaints received from the Railroad Commission in the year 1943?

A. From January 1st to August 17, 1943, or to the present time, we have received four complaints from the Railroad

Commission, and I have listed those complaints in this exhibit.

Mr. Appel: I would like to offer the one-page exhibit in evidence, please.

Commissioner Havenner: May I ask the staff have they any way of checking the accuracy of this particular exhibit?

Mr. Cassidy: That can be checked from the record.

Commissioner Havenner: If there is no objection the one-page document entitled, "Market Street Railway Company service complaints received from the Railroad Commission year 1943" will be received in evidence and marked Exhibit No. 27.

[fol. 924] Commissioner Clark: I would like to ask Mr. Hunter if he can tell us to what extent and in what manner is this document—evidence on this document related to the number of complaints that the Railroad Commission probably received?

Mr. Hunter: I doubt if this is complete. I am sure it is not because we get many phone calls on service. I do not question the statement being accurate as to letters that we have sent to the carrier, but I would say that it does not represent all the complaints that come to our office.

Commissioner Havenner: These are written complaints, are they, Mr. Newton?

A. These are written service complaints received from the Railroad Commission during the year 1943 to date.

Mr. Appel: Now, I refer to another exhibit that you prepared on service complaints received by the Market Street Railway Company by letter from patrons, year 1943. Would you tell me whether that is a complete exhibit and brief of all of the complaints that were received by letter from patrons of Market Street Railway Company from January 1st, 1943 to date?

A. That is a complete list, a total of 24 complaints received from patrons during the year 1943 to date, these complaints being received by letter.

Mr. Appel: I would like to offer this exhibit in evidence, please.

Commissioner Havenner: If there is no objection the 3-page document entitled, "Market Street Railway Company [fol. 925] service complaints received by the Market Street Railway Company by letter from patrons year 1943" will be received in evidence and marked Exhibit No. 28.

Mr. Appel: Now, in reference to schedules would you tell us, at the present time, what percentage of the scheduled runs are being operated by the Market Street Railway Company?

A. If you will refer to Exhibit No. 26 entitled, "Manpower and employment" you will find directly after page 8 an exhibit which shows that during the month of August, 1943, we operated 95.09 per cent of our scheduled runs. I do not have the figures for September to date.

Q. What is your information as to the percentage of scheduled runs operated by the Municipal Railway during that same period?

A. It was my understanding that in August the Municipal Railway 94 per cent of their scheduled runs.

Mr. Hunter: May I inquire does this refer to bus and rail?

A. This is total system.

Mr. Appel: Total operations.

Now, with reference to the matter of skip-stop that has been referred to here, what has been done, Mr. Newton, in reference thereto by the Market Street Railway Company?

A. We have complied with the policy laid down by the Office of Defense Transportation and followed their suggestions. We reviewed the stops made in our system some time after April, 1942—April 17th to be exact—and we increased the practice of having skip-stops in the system by eliminating some 570 stops, in other words, about 10 per cent.

Q. What restraint was placed upon the Market Street Railway Company with reference to further extending skip-stop operation?

A. Well, the Office of Defense Transportation recommended that skip stops be instituted on Market Street. The problem was dealt with by the various City departments and we were ready to inaugurate skip stops on Market Street on July 1st. However, the Police Department stepped into the picture and the Police Commission studied the matter and would not approve of the arrangement, hence there are no skip stops on Market Street.

Q. Now, what has been done since Pearl Harbor, December 7, 1941, in reference to meeting war time conditions in the matter of additions and betterments?

A: I have prepared an exhibit entitled, "Service to shipyards and war industries".

Q. Well, what has been done, say, particularly in reference, before we come to that, Mr. Newton, the matter of additions and betterments in equipment of the Company, obtaining motor coaches and the like?

A. Since Pearl Harbor, December 7, 1941, we obtained 5 motor coaches for our Sacramento Street line.

Q. That is in lieu of the old Cable operation?

A. In lieu of the old Cable cars, yes. We received three additional coaches for our Third Street line and we executed a contract with the Navy covering 16 coaches we are leasing [fol. 927] from them. That is the only equipment that we have obtained.

Q. How about Victory cars?

A. We have remodeled 48 cars to date to increase the carrying capacity, total carrying capacity of the cars, and that remodeling, briefly, consisted of removing the longitudinal—cross-seats and putting longitudinal seats the full length of the car, removing the bulkheads inside of the car, putting in vertical stanchions and grab handles.

Also we have done considerable work on reconstruction of tracks on Mission Street; in fact, we are working on Mission Street right now between 12th and 14th.

Q. Have you been conferring with the Office of Defense Transportation in reference to the matters of service and operation?

A. Yes, there is hardly a day goes by when the Office of Defense Transportation does not confer with us.

Q. And have you prepared an exhibit entitled,—in reference to the changes made in operating practices and the revision of routes in accordance with the directives and the suggestions of the Office of Defense Transportation?

A. I have.

Q. And is that the exhibit you have before you at the present time?

A. It is.

Q. The Office of Defense Transportation, as shown in this exhibit, was created by virtue of successive executive orders [fol. 928] of the President of the United States in connection with the war effort, that is correct, isn't it, Mr. Newton?

A. That is correct.

Mr. Appel: I would like to offer this exhibit in evidence, if the Commission please.

Commissioner Havenner: Without objection this document consisting of 6 pages and approximately 13 attached pages entitled, "Market Street Railway Company changes made in operating practices—Revision of routes in accordance with directives or suggestions of the Office of Defense Transportation" will be received in evidence and marked Exhibit No. 29.

Mr. Appel: Mr. Newton, the subject came up here in relation to the employment of inspectors by the Market Street Railway Company, and you recall some testimony in that regard?

A. I do.

Q. You have prepared this exhibit in respect to that particular element?

A. I have.

Q. And would you tell us from what source inspectors are obtained by the Market Street Railway Company and what qualifications they have to have before they become inspectors?

A. Our inspectors are obtained from the ranks of the platform men. All of them are ex-motor men, conductors, gripmen, coach operators. We attempt to select the best and most qualified men from the ranks and promote these men to this position of inspector. All of them have had [fol. 929] years of experience in the street railway business.

Q. And you have prepared this exhibit—I do not believe I have offered it in evidence yet, but I would like to offer it in evidence.

Commissioner Havenner: Without objection the document consisting of approximately 10 sheets entitled, "Market Street Railway Company inspectors" will be received in evidence and marked Exhibit No. 30.

Mr. Appel: Now, what has been done in reference to the use of motorcycles by our inspectors?

A. Why, we have 8 motorcycles that are used both day and night by our inspectors and it might be well to point out for the record that we have one chief inspector, 20 regular inspectors and 2 relief inspectors.

Q. And why are the motorcycles used by the inspectors?

A. The motorcycles are used by the inspectors—certain of the inspectors on day and night duty, first, in order that they may patrol more efficiently a given line or lines; second, that in case of delays the dispatcher reaches them on street telephones and they reach the scene of the accident or location where the delay is taking place and clear it up.

Q. In other words, it adds to their facility of speed?

A. It makes the inspector a great deal more capable.

Q. And they are also used in connection with civilian defense here in San Francisco, are they not?

A. That is true.

[fol. 930] Q. Do you know whether the Municipal Railway has made any such provision with reference to use of motorcycles?

A. The Municipal Railway have no men on motorcycles.

Q. Do the inspectors of the Market Street Railway do any work for the Municipal Railway in considering the two operation in certain parts of the City?

A. Yes, they do. On lower Market Street our inspectors aid in clearing up delays of the Municipal cars as well as our own, and we do this without charge to the Municipal Railway.

Q. How about wrecking service?

A. The same obtains.

Q. That is we—

A. We furnish the wrecker.

Q. And in a district where the Municipal Railway has no such equipment?

A. We furnish the wrecker on lower Market Street for the reason that we have a wrecker stationed at the Ferry Building and usually where there is a delay in the Municipal Railway we are affected on lower Market Street and it is to our interest to get in and help clear the delay as promptly as possible.

Q. Now, in reference to the salaries of the inspectors, when the Company found itself in a position where it felt it could increase salaries of inspectors what was done in respect thereto?

A. The salaries of inspectors were increased before the freeze order went into effect in October, 1942.

Q. That is the anti-inflation law?

A. Yes, sir.

In May, 1943, the Company sought to increase the wages [fol. 931] of the inspectors again and application was made

to the Wage Stabilization Board of the Treasury Department and was denied.

Commissioner Clark: May I ask a question?

A. Certainly.

Q. Right in line with that thought, Exhibit 20, has any similar request been made for permission to increase the wages of other employees?

A. Yes,—yes, we received approval from the War Labor Board within the past two weeks to increase the wages of non-unionized general office help, people in classifications normally going before the War Labor Board. Those rates were approved and are now in the process of being placed in effect.

Q. Mr. Kahn referred to your familiarity with Exhibit No. 20. That was prepared under your supervision?

A. What is that No. 20, please?

Q. Well, a copy, evidently of the proposal that was submitted by the Division?

A. No, this was not prepared under my jurisdiction at all. This is an exact copy of the Union's proposal furnished by the Union.

Q. And from an operating standpoint as Vice-President of the Company in charge of operations did you contemplate that you possibly will be faced with putting that scale of pay in effect?

A. I do not know—I do not know.

Q. To what extent does it have a bearing on this hearing, in your opinion?

A. To this very important extent that should the War [fol. 932] Labor Board sustain the request of the men and give them everything that they ask for in this proposal it would cost the Company a minimum of one and a quarter million.

Q. Do you believe that if improvement in wages and other working conditions were satisfactory to the Company, and it so indicated to the War Labor Board, it would approve it, do you believe that such a program of working conditions would improve the number of employees that might be made available?

A. I don't believe so.

Q. You do know that the staff, Mr. Hunter, stated that, in his opinion, it would improve, and also a representative

of the Municipal Railway so stated that it was a very important matter in presenting their position in that respect?

A. I do.

Q. You do not agree with them?

A. I do not agree with it. I would point to the case of the California Street Cable Railway where the War Labor Board granted a wage increase of 80 to 83 cents. The employees of the California Street Railway went fishing one day and returned with an agreement that the case would be appealed to the War Labor Board, which was done. The War Labor Board finally granted 87½ cents to the California Street Cable Railway, and if you will check their employment record you will find that they have a lesser number of employees today than they had when—since the 87½ cents was granted than they had when the original [fol. 933] application was made for an increase.

Q. As Vice-President of the Company, then, you would not recommend any improvement in working conditions or in wage scale because you would not feel that would improve the Company's ability to procure and maintain additional employees?

A. In so far as recommending an increase in pay to meet a manpower shortage, I would not recommend it because I do not believe that you are going to increase the number of employees through an increase in wages.

Q. Have you recommended it for any purpose?

A. Have I recommended it for any purpose?

Q. Yes.

A. I have recommended it—increases for our men where I felt that certain increases were warranted through merit, yes.

Q. You do not believe, though, generally speaking, that conditions would warrant an increase in the pay of, we will say, platform men and others directly concerned with the operation of your railway facilities?

A. I have not stated that.

Q. What is your opinion, will you tell us?

A. My position is just this, that certain regulations have been laid down by the War Labor Board which we are expected to follow. It is in the interests of National policy that we do follow the principles laid down.

Q. The Los Angeles Railway, for example, as, probably you know, has requested that they be permitted by the [fol. 934] War Labor Board to increase wages of their men.

A. And the War Labor Board have not shared the opinion of the management of the Los Angeles Railway.

Q. Have you made such a request?

A. To who?

Q. To the War Labor Board?

A. It may be well for me to tell you exactly what happened.

In May this request was made by the representatives of Division 1004, representing some 1700 unionized employees of our Company.

Meetings were had or held with the employees; it became apparent, after two meetings, that we would not have a meeting of minds, in fact our employees were—demands were a great deal more than we could see our way clear to grant.

We then met and agreed to refer this case to the Federal Conciliation Service. A joint telegram was sent to Dr. Steelman. He referred the case to one of the Federal Conciliators in San Francisco who met with both parties innumerable times and tried to get both parties together. His efforts were unsuccessful so that the case was referred by him to the War Labor Board in Washington who, in turn, remanded it to the 10th Regional District.

A three-man panel was selected; last Wednesday, Thursday and Friday meetings were held before that panel. Representatives of the Company and the Union presenting their case. We ended those hearings last Friday with the understanding that both sides would file briefs 5 days after the receipt of transcript and that should we desire further hearings such hearings would be held approximately October 1st.

Now, such case—

Q. One more question. Subsequent to the submitting of this document referred to as Exhibit No. 20 by the Union labor representatives you, as representative of your Company, signed and submitted a counter-proposal which you would be willing to enter into in the way of an agreement?

A. We submitted a counter proposal in so far as working conditions were concerned, but, in writing, we made no counter-proposal in wages.

At the meeting before the War Labor Board I indicated that the Company's position was that they would be perfectly willing to grant increases in wages in conformity with the Little Steel Formula, and in cases where there

were inequities on that account we would be very glad to make the necessary changes in wages at the direction of the War Labor Board.

Q. The Little Steel Formula then being the determining factor instead of the need for additional employees and the thought that additional pay might provide them during this emergency?

A. I might point out that the War Labor Board in none of their decisions, to my knowledge, have increased pay on account of solving or aiding the manpower problem [fol. 936] unless the war manpower Commission introduced testimony indicating that such action was necessary. There has been no showing by any Governmental Agency in our case that the increase in wages would provide the necessary manpower.

Q. Do you consider the Railroad Commission of the State of California a Governmental agency when you embrace it in that statement?

A. I did not embrace it, no, sir.

Commissioner Clark: That is all.

Mr. Kahn: Through the Conciliation Service, I might say, Mr. Commissioner, we offered the men an increase of 7 cents straight over two years. Of course, this offer being subject to the approval of the War Labor Board under whose jurisdiction we are operating in so far as wages are concerned, and the men, that is, the negotiating committee, the Union, did not see fit to accept it.

Mr. Appel: Mr. Newton, in the case of the California Street Cable Railway the Union—what they were ultimately paid in the form of wages was the amount that the Union demanded, isn't that correct?

A. That is right.

Q. And even after that they suffered a worse manpower shortage than they had theretofore?

A. That is exactly what I stated, Mr. Appel.

Commissioner Clark: May I ask a question there. Did those demands as heard and complied with compare with the demands in this case?

A. In the California Cable case the men were receiving [fol. 937] 80 cents an hour, they asked for 87½ cents an hour; in our case the men are receiving 83 cents an hour. for 2-man operation, they are asking for \$1; on one-man

operation they are receiving 90 and they are asking for \$1.10.

In addition thereto our men are asking for overtime in excess of a 40-hour week, but they are further asking a guaranteed 48-hour week. In other words, then, in line with counsel's question, simply because the California Cable Company were asked for an increase and was granted and did not result in correcting their labor shortage situation is no reason that this is in the same category, your situation as related to these demands here?

A. Then—The contrary is true, Mr. Commissioner, there is no reason that it will.

Mr. Appel: Are you still pressing—pardon me, had you finished?—Are you still pressing the matter of increase in salaries of the inspectors?

A. Yes, we are. We are introducing a new application.

Mr. Hunter: Might I ask to what level will that bring them?

A. We asked for an increase of \$20 per month which will bring them up to \$200 a month. They are now receiving \$180.

Mr. Appel: Have you any idea what the take-home pay of the employees of the Market Street Railway Company, the Union employees is, Mr. Newton? Can you enlighten us on that?

[fol. 938] A. I shall have to give you that figure from memory.

Q. That will be sufficient.

A. The two-men pay right now is running about \$52 a week and the one-man pay about \$57 a week, am I correct, Mr. Kahn?

Mr. Kahn: That is my recollection that bus drivers are taking home about \$57 a week and the men on the street cars about \$6 a week less.

The Witness: Yes, I can not recall the pennies, but it was 51 and 57.

Mr. Appel: Now, Mr. Newton, you prepared an exhibit here on the matter of service to shipyards and war industries showing the part Market Street Railway Company is playing in the war effort, is that correct?

A. That is correct.

Q. Would you just explain that exhibit in a general way, please?

A. Since December 7, 1941, the Market Street Railway Company has had as its policy of operation that service to shipyards and war industries is the primary consideration, and that consistent with that policy satisfactory and adequate service would be rendered on all of its lines.

Since Pearl Harbor we have established street car service to the Ferry Building to meet the schedules of the ferry boats operated by the Wilmington Transportation Company. We are connecting with their boats beginning at 5:30 in the morning, that is, leaving San Francisco at 5:30 in the morning, and we have covered them until 1:50 [fol. 939] in the morning to cover returning boats from Richmond to San Francisco. As was stated by Lieutenant Commander Jenkins this morning we are operating special service on Third and Kearny Streets, operating coaches direct to Hunter's Point. These coaches, incidentally, are operated express or non-stop Mission Street to Army Street. We presently have 20 coaches in that service.

Last Sunday we established a cross-town line via Silver Avenue and Palou Street into the south gate of Hunter's Point, a coach service. We also established a line via Evans Avenue from Hunter's Point, Evans, Third, Army, Guerrero, 26th to Castro Street, a full service from 5:25 A. M. until 12:42 A. M. is rendered on both of those cross-town lines operated for the Hunter's Point employees.

We extended street car service on April 15, 1943, to the foot of the viaduct at Mariposa Street to provide additional service to the Union Iron Works and at the same time relieve some of the coach service to Bethlehem Steel in order to transfer that service to the Hunter's Point service. We established a cross-town line from Bethlehem Steel's Union Iron Works to 26th and Castro Street via Guerrero, Army and Third Street.

We have greatly augmented our service on the No. 22 line, Fillmore Street, so as to take care of the needs of the workers at the Union Iron Works plant.

Since early last fall we have been operating a contract [fol. 940] service for the Western Pipe and Steel Company between their South San Francisco plant and two terminals in San Francisco, one being at Van Ness and Bay Street and the other at California Street and Arguello Boulevard.

We are operating special service at the request of the Navy to transport men to or from ships as required, also transporting personnel engaged in maintenance work. We are also providing a service to the Army hauling draftees largely.

I believe that covers that situation, Mr. Appel.

Q. Will you tell us, then, Mr. Newton, are all of those persons who require transportation in so far as shipyards and Navy yards in a position where they can get direct transportation?

A. No, they reside in all parts of the City and I suppose that a study would show that most of them or a large proportion of them have to use more than one line in order to reach their destination.

That is done by transferring and we must, of course, coordinate all of our schedules so as to fit in with the needed service at the war plants.

Q. Then am I correct in saying that they are transported by Market Street Railway Company feeder lines from the outlying districts to lines conveying them to the war industries and shipyards and the Navy yards?

A. That is true.

Q. Have you ever received any complaints about service [fol. 941] that those employees at those various plants have been receiving?

A. You are talking about, now, any war industry in San Francisco?

Q. No, I am talking—I am not talking about the war industries, the Navy plants generally.

A. We have received no complaints from the Navy other than requests for readjustment of schedules in order to better handle loads being offered.

Q. I am talking now particularly about those persons who are employed in those various industries and in order to get to the industries and the Navy Yards have you received any or recall ever receiving any complaints from them?

A. No, we have received no complaints for—from people working in any of the industrial districts other than the demand for additional service.

Q. I show you, Mr. Newton, a—I wish to introduce that last exhibit, pardon me, I thought I had offered it.

Commissioner Havenner: Without objection this document consisting of 3 pages entitled, "Market Street Rail-

way Company service to shipyards and war industries" will be received in evidence and marked Exhibit No. 31.

Mr. Appel: I show you, Mr. Newton, a photostatic copy of a letter from Mr. Robert O. Crowe, Regional Director, Division of Local Transport of the Office of Defense Transportation, dated September 9, 1943, and ask you whether you received that letter on September 9 from Mr. Crowe?

[fol. 942] A. I did.

Mr. Appel: I would like to offer the letter in evidence, may it please the Commission, and also would like the privilege of reading it.

Commissioner Havenner: No objection the letter just identified will be received in evidence as Exhibit No. 32.

Mr. Appel: May I read it, Commissioner Havenner, please?

Commissioner Havenner: Yes.

Mr. Appel: (Reading.)

"Office of Defense Transportation Division of Local Transport 1355 Market Street San Francisco 3, California September 9, 1943

"Mr. L. V. Newton, Vice President Market Street Railway Company 58 Sutter Street San Francisco, California

"DEAR MR. NEWTON:

In a conference with officers of the Twelfth Naval District with respect to transportation, your Company was commended for the fine cooperation accorded. May we add appreciation of this Federal Agency for your attitude and efforts to furnish service to war plants. Such operation by your Company has been adequate and satisfactory.

"As you are probably aware, through requests for operating data, we have been prosecuting a survey of local transportation, aided by Mr. Morris Buck of our Washington engineering staff. The report is now in Mr. Eastman's hands, and while we may not advise as [fol. 943] to details of recommendations, you should know that the all-over picture showed an excess of service over demand on certain locations for the designated hours. We believe that the recommended program will produce much better transportation and pro-

vide quite a measure of relief for your manpower situation.

"Yours very truly, Robert O. Crowe, Regional Director Division of Local Transport."

Now, was that given a number as an exhibit?

Commissioner Havenner: 32.

Mr. Appel: Could you enlighten the Commission as to the statement contained in the second paragraph of Mr. Crowe's letter, Mr. Newton, please?

A. Yes.

For some little time the Office of Defense Transportation has been studying the San Francisco transit, local transit situation and they have had a representative of the name of Mr. Morris Buck, an engineer, studying the situation. It is my understanding that his work was recently concluded and his report transmitted to Mr. Eastman. As indicated in this letter by Mr. Crowe it is my further understanding that one of Mr. Buck's recommendations is that excess service rendered on certain of our lines during the off-peak periods be eliminated.

Mr. Cassidy: May I ask a question?

Mr. Appel: Yes, I am through with Mr. Newton. You may go right ahead.

[fol. 944] Cross-examination:

Mr. Cassidy: Referring to this letter, Mr. Newton, and this survey that is referred to—

A. Yes.

Q. Does that survey deal solely with the Market Street problems or does it also embrace the other companies?

A. It embraces the Municipal Railway as well as the Market Street Railway Company. Also it covers the California Street Cable Railway.

Commissioner Sachse: May I ask a question on that, Mr. Newton?

Do you know what the recommended program is that is referred to in the last sentence of this—of that letter where it says, and I quote: "We believe that the recommended program will produce much better transportation and provide quite a measure of relief for your manpower situation."

A. You want me to develop that?

Q. First, I asked you whether you knew what that program was in so far as, of course, your own service is concerned?

A. In so far as—

Q. Do you know?

A. Well, I do not know the detailed program, but I do know that Mr. Buck feels that we were rendering too much service during the off peak periods on certain of our lines. He said our service was too good, we would have to cut it and in that way we would gain manpower.

Q. You do not know what he refers to when he says that "much better transportation will be produced"?

[fol. 945] A. No, sir, I do not.

Mr. Appel: I have finished with Mr. Newton.

Mr. Cassidy: I understand Mr. Hunter has some questions.

Mr. Hunter: Mr. Newton, I would like to refer to your system of designing schedules. Can you tell the Commission what general policy or plan you follow in designing your schedules today? You might explain further as to what elements tend to limit those schedules.

A. Well, in designing our new schedules today we first take riding checks to see exactly what the riding is as of today. We then determine where we should augment the service or decrease the service. We then fashion new tables bearing in mind observance of franchise requirements, as regards minimum headways, observance of the necessary—not necessary, but observance of the stipulations in our Union agreement in regard to the number of runs that may be split and, finally we evolve a table.

Q. To what extent does manpower shortage enter into the design of your schedules?

A. It enters into the design of a schedule in this way, that we try to fashion schedules with more trippers than we use in normal times in order to work part time workers.

Q. With respect to the service offered—and I am still talking about designing schedules—how does your plan today compare with what I will call normal times? Do you try to get as much service, where the traffic shown by [fol. 946] test to be the same volume today, as you would in normal times?

A. Yes, we do try to give as much service, and in fact that is one of the things that we are being criticized by the Office of Defense Transportation for doing. That, of course, refers to service in the off peak periods. In designing these schedules we have got to build all of our schedules around the shipyards and war industries.

Q. Yes, those are the elements I had in mind, the travel conditions that—let us take the No. 5 out here, how do you design the schedules for that line today as compared to 5 years ago?

A. 5 years ago you did not have the early afternoon travel inbound to the Union Iron Works, such as you have today.

Q. Well, what I am trying to get at, do you attempt to give—do you attempt today to give as good service on the No. 5 as you did 5 years ago?

A. Yes, I think we do. 2:30 in the afternoon we have excellent inbound service now with very frequent headway.

Q. Let us take the whole day's operation, including the peak times, do you attempt to design your schedules to give as complete a service today, including the peaks as you did 5 years ago?

A. Yes, I think we do—I think we do, and it is a much more difficult job because, as I have stated before, we must cover the shipyards and war industries.

Q. I am just talking about designing schedules now.

A. I understand that.

[fol. 947] Q. Did you carry as great a load on your cars during the peak hours 5 years ago as you do today?

A. I do not think that is materially different. If you will refer to your Exhibit 6 you will see a load factor under two. If I am not mistaken those checks were taken in May of this year.

Q. Have you changed your system of designing schedules in the last 5 years?

A. Yes, we have.

Q. To what extent?

A. Well, the big change that we made was when we first recognized that running time over various periods of the day and night varied quite considerably, and we designed schedules to recognize that differential in running time. Then with the advent of war when we saw what we were going to be up against in building tables to provide adequate service to the shipyards and war industries we knew

we would have to employ trippers and we started building tables with trippers in mind.

Q. But the fundamental plan of designing a schedule, your office work, has that changed in the last 5 years? Have you made any improvement or change in your system of designing schedules in so far as the office mechanics are concerned?

A. Yes, we have, so far as the mechanics of making schedules are concerned they used to be written by hand, now they are made on the multigraph process.

Q. But aside from that, the system of trying to keep in touch with the traffic requirements, has that changed? The [fol. 948] checks made as to traffic that will offer, or schedules that are run or designed to be run in the future?

A. Well, we are obtaining information in the same way now that we did 5 years ago, namely, by putting men on the street. I know of no other way to obtain the information excepting through conductors' checks which are not, in my estimation, altogether reliable.

Q. I would like to refer, Mr. Newton, to your Exhibit—to Exhibit 26 and that tabulation there showing percentage of schedules operated. Have you that?

A. Yes, I have it before me.

Q. I understood you to say that included both bus and street cars?

A. That is right, that is the system.

Q. And this is largely—is there any information there to show us how much of that is bus?

A. Well, about 25 per cent of our service is bus.

Q. Does failure to get out scheduled operations on buses run about the same percentage as car lines?

A. About the same—about the same.

Q. With respect to the inspectors on the street, has there been any change in their supervision as to turn-back authority, and that sort of thing, in the last 5 years?

A. So far as authority is concerned, no. The inspectors have always had the authority to turn back service if, in their judgment, it was the thing to do. I might say that since May 15th the—following your recommendation—the [fol. 949] number of inspectors has been increased and I believe they are doing a better job today than they were in May when this matter first came up.

Mr. Hunter: I think that is all.

Commissioner Sachse: Mr. Newton, I think you answered Mr. Hunter that you thought the peak loads were about as heavy now, not materially different, than they had been prior to the war conditions?

A. That is right.

Q. But would you say that the peak periods are lengthening—are lengthened?

A. Why, certainly, due to the staggered hours program that was placed in effect under the supervision, let us say, of the Railroad Commission last November, which I have outlined in detail in Exhibit No. 29..

Q. You probably have covered all that?

A. I have covered that, Mr. Sachse, not orally, but in writing.

Q. Well, then,—

A. We have broadened the evening peak through the staggering of hours, not as much as we might do, but at least it has been a forward step.

Q. In other words, you have extreme load conditions now for longer—for more hours during the 24 hour day than you had prior to this emergency?

A. That is right.

Q. The only other point I want to make—and it is not a question, necessarily—with reference to Exhibit 22, Mr. Hunter, you recall the questions that were asked Mr. Hunter. Have we now in the record the actual number [fol. 950] of passengers that are carried on the Market Street lines in the three periods that are shown on the last page of that exhibit, namely, the first 6 months of 1937, first 6 months of 1938 and the first 6 months of 1939, and there also are in addition, the actual number of passengers that were carried, the actual number of car hours that were operated?

Mr. Hunter: We have as to passengers and I think as to car hours.

Commissioner Sachse: My point is in order to compare—

Mr. Hunter: Yes.

Commissioner Sachse: —the actual figures with these estimates. We can have that, we should have those figures. They, of course, are available in the records by months,

the first 6 months of 1937, the first 6 months of 1938 and the first 6 months of 1939, both passengers and car hours?

Mr. Cassidy: May we be excused just a moment? We are checking.

Commissioner Sachse: Certainly.

Mr. Hunter, you do not have to look that up now, just so it may be understood, with the agreement of Mr. Appel, that that will be considered, that information will be considered part of the record.

Mr. Cassidy: I would suggest, Mr. Commissioner, when those figures are available, that they be put in as an exhibit with a number reserved.

Commissioner Sachse: Very well.

[fol. 951] Mr. Cassidy: So that might actually be in the record.

Mr. Appel: We will have no objection to that, to furnishing you whatever information you desire on that line.

Commissioner Sachse: That information, then, would have the exhibit No. 33.

Commissioner Havenner: Any further questions of Mr. Newton?

No questions from the staff? Have you some questions, Mr. Hunter?

Mr. Hunter: No, thank you.

Commissioner Havenner: Any further questions at this time?

Mr. Appel: None from the Company.

Mr. Holm: None from me.

Commissioner Havenner: Any other testimony to be offered at this time?

Mr. Appel: We have nothing further.

Commissioner Havenner: Have you anything?

Mr. Holm: No, we have nothing further.

Commissioner Havenner: Have you anything further on behalf of the staff?

Mr. Cassidy: Nothing further, Mr. Commissioner.

Commissioner Havenner: Mr. Fankhauser, have you anything further? Is there any one present who has anything further to offer?

I take it, then, at this time—perhaps before we take this [fol. 952] matter under submission I might say that I think the motions pending to strike out certain testimony in the record will be denied. The Commission, under the authority of the Public Utilities Act, pursues a very liberal policy in allowing testimony to go in the record. We are given wide discretion in assaying that testimony, so I think the motion made by Mr. Appel and the one made by Mr. Beck, I believe, will both be denied, and the matter will be taken under submission at this time.

The Commission will adjourn.

(Whereupon, at the hour of 6:15 o'clock P. M. the above matter was submitted and the Commission adjourned.)

[fols. 953-1072] Transcript, Volume 4, Hearing at San Francisco, December 21, 1943, consisting of oral argument of counsel on petition for rehearing, omitted in printing.)

[fol. 1073-1160] (Transcript, Volume 5, Hearing at San Francisco, December 22, 1943, consisting of oral argument of counsel on petition for rehearing, omitted in printing.)

[fols. 1161-1200] (Transcript, Volume 6, Hearing at San Francisco, February 3, 1944, consisting of oral argument of counsel on petition for extension of effective date of Decision No. 36739, omitted in printing.)

APP. 21115

Railroad Commission, California

Hall Exhibit No. 46

Filed November 4, 1938

California Railroad Commission

Transportation Department.

Engineering Division

Market Street Railway Company

[fol. 1202]

	(1)	(2)	(3)	(4)	(5)	Estimated Revenue June to Sept.— 7-cent fare—no tokens—8% loss of token riding on competitive lines— 5% loss on non-competitive lines	
	Revenue June to Sept., inc., 1938—7-cent fare and 4 tokens 25¢					Estimated Total Revenue	Estimated Increase
Line	Total Cash Revenue	Total Token Revenue	Total Sun. Pass Revenue	Total School Pass Revenue	Total Revenue		
22—Fillmore & 16th.....	\$39,196.40	\$76,368.70	\$1,331.00	\$3,020.85	\$119,916.95	\$122,238.56	\$2,321.61 C
31—Balboa.....	24,839.49	64,336.35	597.77	2,320.28	92,093.89	94,049.72	1,955.83 C
45—Fillmore Hill.....	5,701.18	7,356.47	90.00	339.87	13,487.52	13,711.16	223.64 C
1—Sutter & California.....	24,333.45	44,002.21	666.32	1,783.03	70,785.01	72,122.68	1,337.67 C
2—Sutter & Clement.....	24,393.88	43,723.48	730.56	1,779.34	70,627.26	71,956.45	1,329.19 C
3—Sutter & Jackson.....	14,608.21	32,755.04	329.92	1,232.61	48,925.78	49,921.53	995.75 C
4—Sutter & Sacramento.....	8,590.55	21,446.54	218.75	781.98	31,037.82	31,689.79	651.97 C
20—Ellis & O'Farrell.....	20,952.96	46,898.29	631.00	1,769.87	70,252.12	73,253.61	3,001.49 NC
6—Masonic Avenue.....	15,257.57	36,504.62	426.75	1,348.59	53,537.53	54,647.27	1,109.74 C
24—Divisadero & 16th.....	904.17	2,173.26	10.75	80.00	3,168.18	3,307.27	139.09 NC
7—Haight & Ocean.....	20,450.29	48,966.64	675.78	1,812.00	71,904.71	73,393.30	1,488.59 C
17—Haight & Ingleside.....	17,879.58	44,434.48	727.21	1,629.29	64,670.56	66,021.37	1,350.81 C
33—Eighteenth & Park.....	10,370.54	24,559.61	422.50	913.84	36,266.49	37,838.31	1,571.82 NC
5—McAllister.....	41,307.20	107,402.97	1,372.76	3,878.56	153,961.49	160,835.28	6,873.79 NC
21—Hayes.....	24,343.40	68,215.88	638.01	2,408.80	95,606.09	99,971.91	4,365.82 NC
40—San Mateo.....	57,420.36	8,478.29	118.40	1,705.87	67,722.92	68,265.53	542.61 NC
12—Ingleside.....	22,251.16	42,081.16	855.50	1,684.67	66,872.49	68,151.76	1,279.27 C
26—Guerrero.....	9,846.81	25,028.82	206.25	906.85	35,988.73	37,590.57	1,601.84 NC
10—Glen Park.....	8,252.69	19,778.53	87.00	726.60	28,844.82	30,110.65	1,265.83 NC
9—Valencia.....	37,047.50	79,542.03	869.22	3,035.62	120,494.37	125,585.06	5,090.69 NC
8—Market.....	10,747.89	17,679.34	315.22	742.69	29,485.14	30,022.59	537.45 C
14—Mission.....	36,644.17	81,124.14	579.25	3,060.03	121,407.59	126,599.53	5,191.94 NC
23—Richland.....	55.90	417.54	25	12.31	486.00	512.72	26.72 NC
36—Folsom.....	4,518.18	11,888.28	41.42	425.07	16,872.95	17,633.80	760.85 NC
19—Polk & Larkin.....	21,275.93	36,491.16	473.00	1,504.69	59,744.78	60,854.11	1,109.33 C
25—San Bruno.....	13,885.34	32,417.61	337.75	1,205.06	47,845.76	48,831.26	985.50 C
35—Howard.....	8,577.83	16,408.88	236.67	651.81	25,875.19	26,925.36	1,050.17 NC
27—Bryant.....	2,914.51	8,693.79	12.00	300.11	11,920.41	12,184.70	264.29 C
11—Mission & 24th.....	22,740.20	44,537.81	559.50	1,753.20	69,590.71	72,441.13	2,850.42 NC
15—Kearney & Beach.....	23,872.33	43,764.18	634.32	1,764.64	70,035.47	71,365.90	1,330.43 C
29—Third & Sansome.....	10,639.60	31,570.54	55.17	1,092.50	43,357.81	45,378.32	2,020.51 NC
30—Army.....	450.00	1,339.54	—	46.39	1,835.93	1,921.66	85.73 NC
16—Third.....	15,957.45	35,256.92	620.30	1,339.59	53,174.26	54,246.07	1,071.81 C
12—First & Battery.....	173.78	193.66	2.61	9.47	379.52	391.91	12.39 NC
28—Ferry & S. P. Depot.....	3,579.29	6,354.83	59.18	258.45	10,251.75	10,658.46	406.71 NC
11—Second & Market.....	219.01	201.89	2.81	10.89	434.60	447.52	12.92 NC
Total Electric.....	\$604,198.80	\$1,212,393.48	\$14,934.90	\$47,335.42	\$1,878,862.60	\$1,935,076.82	\$56,214.22
Estimated Increase in Electric Revenue — 2.992%							
8—Sacramento.....	\$12,399.45	\$19,649.75	\$269.00	\$596.35	\$32,914.55	\$34,172.13	\$1,257.58 NC
9—Powell.....	18,020.38	24,571.75	222.00	790.05	43,604.18	44,351.16	746.98 C
0—Jackson.....	20,950.12	37,002.54	306.00	1,075.06	59,333.72	60,458.60	1,124.88 C
1—Castro.....	1,852.40	4,442.61	91.00	117.80	6,503.81	6,788.14	284.33 NC
Total Cable.....	\$53,222.36	\$85,666.65	\$888.00	\$2,579.26	\$142,356.26	\$145,770.03	\$3,413.77
Estimated Increase in Cable Revenue — 2.398%							
1—Mission & San Bruno.....	\$909.17	\$3,337.99	\$32.50	\$142.17	\$4,421.83	\$4,635.46	\$213.63 NC
2—Excelsior.....	898.90	3,622.98	48.75	151.84	4,722.47	4,954.34	231.87 NC
3—Southern Heights.....	700.18	2,129.60	26.75	94.80	2,951.33	3,087.62	136.29 NC
4—Sunset.....	44.75	271.92	—	10.51	327.18	344.58	17.40 NC
0—Visitation.....	1,687.63	4,263.63	25.25	198.54	6,175.05	6,447.92	272.87 NC
Richmond (Park & Sacto).....	53.21	194.55	23.75	9.02	280.53	292.98	12.45 NC
Total Bus.....	\$4,293.84	\$13,820.67	\$157.00	\$606.88	\$18,878.39	\$19,762.90	\$884.51
Estimated Increase in Bus Revenue — 4.685%							
Grand Total.....	\$661,714.99	\$1,311,880.80	\$15,979.90	\$50,521.56	\$2,040,097.25	\$2,100,609.75	\$60,512.50
Estimated Increase in Total Revenue — 2.966%							

* Includes \$5,594.05 received from sale of excursion tickets.

C—Competitive.

NC—Non-competitive.

[fol. 1203]

APP. 21115

Railroad Commission, California
Kahn Exhibit No. 6
Filed 4-22-37

Before the Railroad Commission of California.
Application No. 21115.

Market Street Railway Company
Estimated Effect of Change in Fare Structure

Line	Estimated Revenue	1936 Revenue
1-Sutter-California	\$177,070	\$261,165
2-Sutter-Clement	231,920	291,018
3-Sutter-Jackson	146,560	172,118
4-Sutter-Sacramento	124,360	145,879
5-McAllister	636,280	525,929
6-Masonic	239,860	219,898
7-Haight-Ocean	254,080	271,743
8-Market	69,780	212,073
9-Valencia	529,860	437,905
10-Glen Park	132,660	109,898
11-Mission-24th	305,200	252,290
12-Ingleside	240,420	220,760
14-Mission	466,520	385,848
15-Kearny-Beach	253,410	232,622
16-Third	198,990	182,290
17-Haight-Ingleside	278,230	255,815
19-Polk-Larkin	173,610	273,797
20-Ellis-O'Farrell	265,800	220,554
21-Hayes	393,740	325,578
22-Fillmore-16th	459,920	399,930
23-Richland	3,600	3,127
24-16th-Divisadero	73,630	61,058
25-San Bruno	148,040	151,754
26-Guerrero	152,810	126,416
27-Bryant	40,800	42,209
28-Ferry-S. P. Depot	52,530	41,421
29-Third-Sansome	116,910	96,913
30-Army	3,300	2,904
31-Balboa	368,720	338,391
33-Eighteenth	125,800	104,346
35-Howard	109,720	90,808
36-Folsom	65,720	54,421
39-Visitation	14,190	11,847
40-San Mateo	258,800	256,496
41-2nd-Market	13,300	10,558
42-First-Fifth	11,200	8,974
45-Fillmore Hill	63,330	52,413
48-Crocker-Amazon Coach	9,400	7,947
49-Mission-San Bruno Coach	15,430	13,011
50-Excelsior Coach	14,130	11,907
52-Post-Tenth		25
Southern Heights Coach	13,430	11,339
Sunset Coach	1,500	1,483
Visitation Coach	800	744
Sacramento Cable	146,080	120,872
Powell Cable	155,350	151,117

Line	Estimated Revenue	1936 Revenue
Jackson Cable	209,320	192,279
Castro Cable	39,230	30,988
Chartered Cars	200	250
	\$7,831,320	\$7,414,470
Estimated Loss to Jitneys	66,240	
	\$7,765,080	
Estimated Increase		\$350,610

[fol. 1204]

MARKET STREET RAILWAY COMPANY EXHIBIT No. 17

April 13, 1938

Witness: Kahn

Before the Railroad Commission of California.
Application No. 21115 (Supplemental).

Estimated Effect of 7-Cent Fare

Line	Last 6 months 1937 Revenue	Last 6 months 1937 Estimated at 7¢ Fare	Increase or Decrease
1—Sutter—California	\$124,632	\$87,921 D	\$36,711
2—Sutter—Clement	130,039	105,737 D	24,302
3—Sutter—Jackson	85,878	73,885 D	11,993
4—Sutter—Sacramento	59,771	52,010 D	7,761
5—McAllister	251,680	308,265 I	56,585
6—Masonic	101,572	99,109 I	2,463
7—Haight—Ocean	126,878	123,687 D	3,191
8—Market	78,552	35,158 D	43,394
9—Valencia	211,351	251,345 I	39,994
10—Glen Park	46,575	58,205 I	11,630
11—Mission—24th	114,170	139,950 I	25,780
12—Ingleside	97,564	107,794 I	10,230
14—Mission	201,212	241,087 I	39,875
15—Kearny—Beach	105,612	115,763 I	10,151
16—Third	83,098	90,395 I	7,297
17—Haight—Ingleside	119,588	134,871 I	15,283
19—Polk—Larkin	109,068	90,123 D	18,945
20—Ellis—O'Farrell	115,282	142,740 I	27,458
21—Hayes	159,688	196,041 I	36,353
22—Fillmore—16th	196,124	203,553 I	7,429
23—Richland	9,607	11,443 I	1,836
24—16th—Divisadero	9,403	9,913 I	510
25—San Bruno	73,589	74,363 I	774
26—Guerrero	60,248	75,200 I	14,952
27—Bryant	18,720	18,178 D	542
28—Ferry—S. P. Depot	17,105	21,862 I	4,757
29—3rd—Sansome	64,966	76,537 I	11,571
30—Army	3,025	3,586 I	561
31—Balboa	159,949	182,372 I	22,423
33—Eighteenth	55,105	65,302 I	10,197
35—Howard	44,484	55,390 I	10,906
36—Folsom	25,891	31,985 I	6,094
40—San Mateo	99,828	100,335 I	507
41—2nd—Market	5,239	6,937 I	1,698
42—1st—Fifth	4,159	5,530 I	1,371
45—Fillmore Hill	18,476	22,033 I	3,557
51—Mission—San Bruno Coach	6,005	6,311 I	306

Line		Last 6 months 1937 Revenue	Last 6 months 1937 Estimated at 7¢ Fare		Increase or Decrease
52—Excelsior	Coach	5,097	5,463	I	366
53—Southern Heights	Coach	4,563	4,546	D	17
54—Sunset	Coach	384	391	I	7
Sacramento Cable		56,735	64,335	I	7,600
Powell Cable		71,445	75,689	I	4,244
Jackson Cable		94,798	106,428	I	11,630
Castro Cable		10,745	11,335	I	590
S. S. F. R. R. & P. Co.		5,968	7,917	I	1,949
Sunday Passes		31,055	31,055	—	
School Passes		91,627	109,036	I	17,409
Special Cars		414	414	—	
Total last 6 months		\$3,566,964	\$3,841,525	I	\$274,561
Estimated for 1 year		\$7,133,928	\$7,683,050	I	\$549,122

[fol. 1205]

MARKET STREET RAILWAY COMPANY EXHIBIT NO. 23

Witness Kahn

Before the Railroad Commission of California.
Application No. 21115 (Supplemental).

Estimated Effect of 6-Cent Fare

Line		Last 6 months 1937 Revenue	Last 6 months 1937 Estimated at 6¢ Fare		Increase or Decrease
1—Sutter—California		\$124,632	\$75,362	D	\$49,270
2—Sutter—Clement		130,039	90,633	D	39,406
3—Sutter—Jackson		85,878	63,330	D	25,548
4—Sutter—Sacramento		59,771	44,580	D	15,191
5—McAllister		251,680	264,227	I	12,547
6—Masonic		101,572	84,950	D	16,622
7—Haight—Ocean		126,878	106,018	D	20,860
8—Market		78,552	30,135	D	48,417
9—Valencia		211,351	215,439	I	4,088
10—Glen Park		46,575	49,890	I	3,315
11—Mission—24th		114,170	119,957	I	5,787
12—Ingleside		97,564	92,395	D	5,169
14—Mission		201,212	206,646	I	5,434
15—Kearny—Beach		105,612	99,226	D	6,386
16—Third		83,098	77,482	D	5,616
17—Haight—Ingleside		119,588	115,603	D	3,985
19—Polk—Larkin		109,068	77,249	D	31,819
20—Ellis—O'Farrell		115,282	122,349	I	7,067
21—Hayes		159,688	168,035	I	8,347
22—Fillmore—16th		196,124	174,474	D	21,650
23—Richland		9,607	9,809	I	202
24—16th—Divisadero		9,403	8,497	D	906
25—San Bruno		73,589	63,740	D	9,849
26—Guerrero		60,248	64,458	I	4,210
27—Bryant		18,720	15,681	D	3,039
28—Ferry—S. P. Depot		17,105	18,739	I	1,634
29—3rd—Sansome		64,966	65,603	I	637
30—Army		3,025	3,074	I	49
31—Balboa		159,949	156,319	D	3,630
33—Eighteenth		55,195	55,973	I	868
35—Howard		44,484	47,477	I	2,993

Line	Last 6 months 1937 Revenue	Last 6 months 1937 Estimated at 6¢ Fare	Increase or Decrease
36—Folsom	25,891	27,417	I 1,526
40—San Mateo	99,828	100,100	I 272
41—2nd—Market	5,239	5,946	I 707
42—1st—Fifth	4,159	4,740	I 581
45—Fillmore Hill	18,476	18,886	I 410
51—Mission—San Bruno Coach	6,005	5,409	D 596
52—Excelsior Coach	5,097	4,683	D 414
53—Southern Heights Coach	4,563	3,897	D 666
54—Sunset Coach	384	335	D 49
Sacramento Cable	56,735	55,145	D 1,590
Powell Cable	71,445	64,877	D 6,568
Jackson Cable	94,798	91,225	D 3,573
Castro Cable	10,745	9,715	D 1,030
S. S. F. R. R. & P. Co.	5,968	6,786	I 818
Sunday Passes	31,055	31,055	—
School Passes	91,027	93,460	I 2,433
Special Cars	414	414	—
Total last 6 months, 1937	\$3,566,964	\$3,311,440	D \$255,524
Estimated for 1 year	\$7,133,928	\$6,622,880	D \$511,048

[fol. 1206] [File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA, IN BANK

S. F. No. 16988

MARKET STREET RAILWAY COMPANY, Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and
 Franck R. Havenner, C. C. Baker, Justus F. Craemer,
 Richard Sachse and Frank W. Clark, the Members of and
 Constituting The Railroad Commission of the State of
 California, Respondents

DECISION—Filed July 1, 1944

The Railroad Commission on its own motion ordered an investigation into the reasonableness of the rates and the sufficiency and adequacy of the service rendered by Market Street Railway Company in San Francisco. After hearings the commission filed its opinion and order reducing the rate of base cash fare for transportation of passengers in the city from seven to six cents. The company petitioned for a rehearing which was denied. The matter is here on its petition for a review pursuant to section 67 of the Public Utilities Act.

The petitioner attacks the proceedings and order as a [fol. 1207] deprivation of orderly due process, and as a confiscation of its property.

I

On the first, the procedural question, the company claims that it was denied due process by a failure of notice that it was being charged with the maintenance of unreasonable rates; that the issue of unreasonableness of rates was not framed during the course of the hearing; that the commission introduced no evidence of unreasonableness of the prevailing rate, and that the company was not afforded an opportunity to present evidence on the issue.

The petitioner does not claim that it did not receive a copy of the "Order Instituting Investigation", which was mailed to it. That order notified the company that "the commission, believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company", would institute an investigation upon its own motion "into the reasonableness of the rates, charges, classifications, rules and regulations" of the company, "and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company". The 10th day of May, 1943, was set as the time for the commencement of the public hearings. Notice of the time of hearing was also sent to other public utilities, and public and civic bodies and officers, including the California Street Cable Railroad Co., the Mayor and [fol. 1208] the Board of Supervisors of the City and County of San Francisco, the Department of Public Works, the Board of Public Utilities, the City Attorney, the San Francisco Chamber of Commerce, the Office of Defense Transportation, and others. Hearings were conducted on May 10, July 15, and September 15, 1943. Thirty-three exhibits were introduced, consisting of reports and documents bearing on income and revenues, studies and reports of value, analyses of profit and loss accounts, operative expenses, statistical studies in passenger revenue and car and bus hours, as well as studies in operative equipment, traffic checks, results of operation, charges and revisions in operative practices, and comparative rate and operation analyses of Market Street Railway and the Municipal Railway of San Francisco. Certain voluminous annual and monthly reports in addition were by stipulation deemed to be before the commission. The oral evidence is contained in three

volumes of transcribed testimony. Witnesses were produced by the commission, by the city and by the company. J. G. Hunter, produced by the commission, the first witness to testify, gave a resume of the matters for investigation, which included "operating expenses, taxes, depreciation, studies on rate base figures, the estimated operating results that would obtain under different fare structures." Comparative balance sheets, charges and reports were introduced dealing with these subjects. Comparisons were made between appraisals based on book value and on historical cost. Testimony on the state of the physical properties, on employment conditions, on available manpower, [fol. 1209] on adequacy of the service and facilities, on the possibility of interchange of facilities and a universal transfer system; on the company's franchise obligations in roadbed upkeep, and on elements to be considered in evaluating service, was also received. Mr. Samuel Kahn, who is president and general manager of the company and an engineer and expert in utility management, and Mr. Leonard V. Newton, vice-president of the company and engineer in charge of operations, testified on behalf of the company. On direct and cross-examination Mr. Kahn testified and presented exhibits illustrating his opinion of the effect of various rate structures. Mr. Newton's testimony was confined mainly to operations and employment conditions.

Thus, the company had the required notice of hearing on the question of reasonableness of the rates and full opportunity at the hearings to present any further evidence on the rate issue, had it chosen to do so. The notice and the course of the hearings were adequate to inform the company that the reasonableness of the present rate was under investigation. The discussion on this phase of the review may be concluded by stating that the various studies, reports and other statistical data, including the record in prior rate proceedings, together with the exhaustive investigation into the present state of the properties and the adequacy and value of the service, must be deemed to have had a direct bearing on the rate issue. The fact that the financial and rate base studies were required to be produced by the commission as a part of the record [fol. 1210] was sufficient to give to the company ample warning that the commission was seriously proceeding into an

investigation of the reasonableness of the existing rate. In fact Mr. Kahn's testimony clearly indicated that he so understood the purpose of the inquiry. The statement of counsel that the elements of fair play were so lacking in the proceedings as to call for a conclusion that orderly due process was not observed is not supported by the record. The company had the opportunity to supplement or explain the reports and data introduced in evidence. The commission also accorded the opportunity for argument on the petition for rehearing, but no supplement or explanation of the submitted data was referred to on the argument on rehearing. At that time the petitioner merely contended that a rehearing should be granted in order to conduct further studies on the estimates of future revenues, expenses and net return under various rates, as well as valuation studies to supply evidence of different rate bases, including reproduction cost, different from those on which the commission placed its estimate of a fair return from operations under the reduced rate. Under these circumstances the comment of the court in *Railroad Commission of California v. Pacific Gas & Electric Co.*, 302 U. S. 388, at page 393, is appropriate here: "As we have seen, the respondent [petitioner] was heard, the Commission received the testimony of respondent's witnesses, its exhibits and argument. There is nothing whatever to show that the hearing was not conducted fairly." The petitioner's fur-[fol. 1211] ther demands are more properly addressed to the matter of reasonableness in relation to due process when we come to consider the second phase of this review, namely, the issue of confiscation.

II

The opinion of the commission gives the essential background. The year 1852 saw the first omnibus service in San Francisco; 1860 the first street railway; and 1873 the first cable line. The cable was more suited to the hilly terrain and some of the horsecar lines were converted to the cable method of operation. In 1893 Market Street Railway Company was incorporated and took over eleven of seventeen independent street car lines.

By city charter amendments ratified by the electors in 1902, provisions were enacted for municipal acquisition of public utilities. (Stats. 1903, pp. 586 et seq.) Privately,

owned street railways were permitted to hold franchises for not to exceed 25 years, whereupon tracks and overhead construction should revert to the city without cost.

In 1902 United Railroads of San Francisco was incorporated. It succeeded to the properties of Market Street Railway Company and five additional lines. The earthquake and fire of 1906 caused heavy losses and a large reconstruction program ensued.

In 1912 the first municipal line was placed in operation. Municipal railway expansion proceeded rapidly in order [fol. 1212] to serve the traffic during the Panama Pacific International Exposition in 1915. The city built lines of extension parallel with some of the Market Street Railway lines.

United Railroads became unable to pay the interest on its bonded indebtedness and in 1921 its properties were acquired by the bondholders under foreclosure sale and were in turn sold to Market Street Railway Company. The 25 year franchise limitation was not enforced. Pursuant to section 131 of the city charter (Stats. 1931, p. 3052), the company surrendered its franchises and was granted a 25 year permit to continue operations subject to the right of the city to acquire the properties upon paying the fair value of the operative properties exclusive of going concern value or other intangible elements. In 1925 the company began placing motor buses in operation and by December 1942 it had 125 buses in service.

The competitive factor induced by the continuing expansion of the municipal railway system became a constantly increasing threat to the operational and financial integrity of the company. The Market Street Railway Company came under the jurisdiction of the Railroad Commission, while the municipal lines remained subject to the regulation and supervision of the city. The municipality retained a five cent fare even though the system was operated with a deficit. Market Street Railway's original franchises included a five cent fare clause.

In 1937 Market Street Railway applied to the Railroad Commission for an increase of the fare to seven cents. The [fol. 1213] application was granted to the extent of permitting a two-cent transfer charge. At that time the company was admittedly not seeking the increase on the basis of a fair return on its investment, but sought merely to meet

\$1,000,000 additional annual operating expense due to increased taxes and labor costs. (Dec. #29889, 40 C. R. C. 525.) In its opinion in that proceeding the commission said: "It is clear from this record that operation under any reasonable fare structure will not in the near future yield a revenue sufficient to provide a full return on any reasonable rate base of applicant's property, so long as the competing Municipal lines are operating on a 5-cent fare. For that reason this record does not deal with the matter of establishing a rate base for this property. In fact, the only reference to valuation in this record is that which is contained in the application to the effect that a valuation made [in a report filed with the supervisors in 1929] by the late M. M. O'Shaughnessy, former City Engineer of San Francisco, shows that the present fair value of applicants property is at least \$24,000,000." Its decision (ibid, p. 532) discloses that the president of the company was of the opinion "that experience alone could tell what results would obtain if the proposed fare structures were put into effect."

In 1938 the company made a supplemental application for an increase to a seven-cent fare on a showing that revenues had declined and that further increased operating expenses were imminent due to higher labor costs. The commission [fol. 1214] granted the application to the extent of permitting a seven cent fare, four tokens for 25 cents. Again the commission noted that the company was not seeking the new rate on the basis of a fair return on its investment. (Dec. #30849, 41 C. R. C. 349, 351.)

The City of San Francisco granted franchises to bus companies for operation on a ten cent fare in direct competition with the company, but refrained from granting any such franchises which would compete with the municipal lines. The company attempted to effect economies by installing one-man operation in its electrically operated cars, but that practice was discontinued when the Federal Courts upheld a San Francisco city ordinance forbidding one-man operation of street cars. (San Francisco v. Market Street Railway Co., 98 Fed. 2d 628, 305 U. S. 657, 306 U. S. 667.) The company had attempted to abandon unprofitable lines, but had been unable to obtain permission from the city to do so.

Consequently in the same year (1923) the company made a second supplemental application for a straight seven cent basic fare. The showing was that as a result of the increase

in fares in a twelve month period more than 10,000,000 passengers had been diverted to the municipal lines, and the company was operating at a loss. San Francisco is a city with what is termed a "high riding habit" and a large percentage of the lost traffic consisted of short-haul riders who declined to pay the seven cent fare. In that proceeding the commission concluded that the company was entitled to [fol. 1215] relief to prevent a collapse or partial collapse of its service, and, accepting the company's estimate that revenues could be increased only by a straight seven cent fare, it granted the petition conditionally. It required the company forthwith to petition the board of supervisors of the city for permission to abandon operation on specified lines and for such form of relief as might be necessary to eliminate "jitney" competition. The company complied with the requirements and on December 12, 1938, the board of supervisors denied the requests. Thereupon, on December 27, 1938, the commission ordered the new schedule based on a straight seven cent fare effective January 1, 1939.

The straight seven cent basic fare has continued until the present time. The hoped for results, however, did not immediately materialize, even with the stimulation afforded by the holding of the Golden Gate International Exposition in 1939-1940. Compared with the year 1936, the last year under the five cent fare, the 1941 traffic and revenue reached the lowest ebb, showing a falling off of 64,056,000, or 42 per cent, in revenue passengers, and \$1,426,282, or 19 per cent, in passenger revenue. The figures show a decline of 39 per cent in revenue as compared to the maximum revenue year of 1925. The state of the operative properties and the adequacy of the service continued to decline. The company became unable to discharge its franchise obligations for roadbed maintenance and the city was attempting to collect \$1,691,162.76 claimed as arrears.

After the entry of this country into the present world [fol. 1216] war in 1941, and upon the stepped-up production of war materials, an abnormal increase in traffic occurred resulting in increased revenue, accompanied, however, by a further marked deterioration in the operative properties and in the service to the public.

The commission examined the condition of the properties and the adequacy of the service in relation to the prevailing rates for transportation. It found evidence of long-time neglect, deterioration, mismanagement, indifference to

urgent public need, and other causes productive of poor service, not all of which were chargeable to the war. The company refused to lease idle equipment to the municipality although the latter had sought to put it into service on its own lines after the Office of Defense Transportation had denied it priority rights for new equipment because of the existing condition of idleness of rolling stock in San Francisco, none of which was attributable to the city. The company was unsuccessful in retaining or drawing its share of the available manpower, which was being diverted to the Municipal Railway. Undeniably there is evidence of "deplorable condition of track, of deferred maintenance, unfulfilled street paving obligations, obsolescence of street car equipment, and the failure of the company to replace, during pre-war years, uneconomical and outdated facilities by modern, more efficient, and more profitable means of mass transportation", conditions which had grown progressively worse over a period of years antedating the commencement of the war. Service, with the exception of that to establishments directly engaged in the war effort, [fol. 1217] such as shipyards and army and navy concentration points, steadily declined in quality and adequacy. The commission stated that an analysis of the company's finances showed that over a period of years the company had diverted to payment of indebtedness funds urgently required for proper maintenance and for the replacement of depreciated property.

The record makes it apparent, and the commission recognized, that in the past competition was the factor which prevented the company from reaping financial benefit from any rate structure; that heretofore the private automobile has given the railways competition; that that source of competition is partially eliminated during the period of rubber and gasoline shortage; that the increased traffic due to war activities will not last, and that as soon as transportation conditions return to normal the company will again be handicapped by a seven cent fare against the competition of the Municipal Railway and the automobile; and that under any rate structure the condition of the company will grow even worse than at the former low level unless the service is greatly improved. It is also disclosed that while prior to the war the five cent fare produced a greater gross and net annual revenue than any fare in excess of five cents, a five cent fare structure will not realize any net

return to the company under a competitive system of operation.

Compared with Market Street Railway, the Municipal Railway under a five cent fare has gained in quality of service and equipment, and in financial returns. As with [fol. 1218] Market Street Railway, however, the Municipal Railway's increase in financial returns began with the abnormal increase in traffic.

Attempts had been made to have the city of San Francisco acquire the Market Street Railway. Transportation surveys and property appraisals had been prepared and negotiations carried on over a long period of years. At the general election of November 3, 1942, the electorate of San Francisco rejected a proposed revenue bond issue to raise \$7,950,000, the price theretofore settled upon at which the company would sell its properties to the city. A similar proposition at the same figure was again submitted and again rejected at a special election held April 20, 1943.*

The commission rejected the company's book figures of cost and depreciation and selected the offered price, \$7,950,000, as the value of the utility and rate base for the purpose of computing the return to the company under various rate structures. It concluded that operation under a six cent fare, after deduction from gross passenger revenue of operating expenses, depreciation and taxes, would produce a net return of slightly more than six per cent on the rate base of \$7,950,000. It computed that a seven cent fare, allowing an increase in operating expenses to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes, would yield annual net operating revenues of \$760,000, a return of 9.6 per cent on the rate base. Figuring the return from [fol. 1219] a seven cent fare on a depreciation allowance of \$500,000, which is the amount the company had been charging off annually, the percentage would be 12.7. The commission found both these rates of return excessive and unjustified by the present service. Its computation under a five cent fare, with a depreciation allowance of \$500,000, indicated a deficit of \$1,153,000. On a six cent basic fare it

*Since this review proceeding was commenced and on April 16, 1944, the electorate of the city voted favorably on a proposition to acquire the operative properties of the company on a self-liquidating plan for \$7,500,000.

estimated annual gross revenue at \$8,500,000, operating expenses, depreciation and taxes at \$8,000,000, leaving a net operating income of \$500,000, slightly more than six per cent on the base figure of \$7,950,000, which return it found to be reasonable. It said that consideration of service alone and of the value of service to the patron would justify the fixing of a five cent fare; but it determined that a six cent fare was a just, fair and reasonable rate, provided every possible and reasonable effort promptly be made by the company to furnish an improved service, and that a fare in excess of six cents was unjust and unreasonable.

No contention is urged that a six per cent return on the investment is not adequate, under present conditions, to attract capital and keep a utility in a solvent condition. The question is whether the record clearly establishes that the selection of the figure of \$7,950,000 as the rate base will result in confiscation of the company's property.

The commission rejected all other figures and selected the offered price as that most truly representative of the value of the company's properties. It said that "the only [fol. 1220] available indication in this record of the present value of the company's properties used and useful in the public service is the resolution of the company's Board of Directors, passed on March 25, 1943. The resolution (Exhibit 9) reads as follows:

"Sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he had agreed with the Mayor and other city officials, as well as the Board of Supervisors, to sell the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San

Francisco by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20, 1943. The President also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

"Whereupon, on Motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted.

"Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further resolved, that the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway to the City and County of San Francisco for the sum of \$7,950,000 cash."

*[fol. 1221] The commission adopted the price stated in the offer as the "present fair market value," without the necessity of expressing an "opinion on the reasonableness of the figure of \$7,950,000 as an exact measure of the present fair value of the company's operative property in its present depreciated physical and service condition, with its past earning record and its prospective future under the competitive transportation situation obtaining in San Francisco." The petitioner contends that the ultimate figure adopted by the principals for the sale of the property to the city and therefore by the commission as the present fair market value was based on a capitalization of earnings; that the commission should have proceeded on a consideration of depreciated reproduction cost and historical cost; in accord with the holding of the Supreme Court of the United States in *Smyth v. Ames*, 169 U. S. 466, and other cases.

In *Smyth v. Ames*, after stating that the basis of all calculations as to the reasonableness of rates must be the fair value of the property being used for the convenience of the public, the Supreme Court proceeded to lay down the essential matters for consideration in ascertaining that value (p. 546). "And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are to be taken into consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Subsequent decisions emphasized the necessity for finding fair value by weighing all the elements prescribed in *Smyth v. Ames*. Notably in *Minnesota Rate Cases*, 230 U. S. 352, at 434, the Supreme Court said that there must be a "reasonable judgment having its basis in a proper consideration of all relevant facts," repeating the language quoted from *Smyth v. Ames*. The emphasis progressed to the extent that in many cases, if one factor or element, particularly that of reproduction cost new, had not received consideration in arriving at "present fair value," it was determined that the constitutional due process requirement had been violated. (*Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U. S. 276; *Bluefield etc. Co. v. Public Service Com.*, 262 U. S. 679; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400; *United Railways v. West*, 280 U. S. 234; cf. *Pacific Gas Co. v. San Francisco*, 265 U. S. 13; *Los Angeles Gas Co. v. Railroad Commission*, 289 U. S. 287; *Railroad Comm. of Calif. v. Pacific Gas & Elec. Co.*, 302 U. S. 388.) Thus due process was deemed not to have been observed if it was shown that the regulatory body, in evaluating the plant or operative prop-

erties for rate purposes, had not considered depreciated reproduction cost as well as book cost, actual (sometimes called original or historical) cost, capitalization, etc. Since calculations under each formula led to widely different results it became apparent that in *Smyth v. Ames* rule had proved itself unworkable. Criticisms of it are found in the dissenting and concurring opinions in *Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U. S. 276, 289; *Pacific Gas Co. v. San Francisco*, 265 U. S. 403, 416; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 421; *United Railways v. West*, 280 U. S. 234, 255; and *West v. C. & P. Tel. Co.*, 295 U. S. 662, 680. In the *Southwestern Bell Tel. Co.* case, Justice Brandeis (Justice Holmes concurring with him), disagreed with the majority view that the commission must consider reproduction cost new under the slogan "Estimates for tomorrow cannot ignore prices of today," and advocated the prudent investment theory.

In *Georgia Ry. v. R. R. Comm.*, 262 U. S. 625, decided less than three weeks later, Justice Brandeis writing the majority opinion distinguished the *Southwestern Bell Tel. Co.* case. The court decided that the commission was not bound to slavish adherence to reproduction cost new in a case where the evidence showed that it gave consideration to that element, the dissenters seeking to apply the *Southwestern Bell* decision. On the same day the court also decided *Bluefield Water Works v. Public Service Comm.*, 262 U. S. 679, wherein reproduction costs had not received [fol. 1224] consideration and the court reversed, following the *Southwestern Bell* case, Justice Brandeis disagreeing with the grounds of reversal.

In the case of *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 408, the court required a further step, namely, that the future as well as the present must be regarded; that present value could not be determined without an honest and intelligent forecast as to probable price and wage levels, probable yield over operating expenses, etc., during a reasonable period in the immediate future.

In 1933 the Supreme Court obviously began to anticipate a departure from adherence to *Smyth v. Ames*. In the case of *Los Angeles Gas Co. v. Railroad Comm.*, 289 U. S. 287, the court in effect upheld the California commission which, in making a rate reduction order, had rejected reproduction cost figures as "too uncertain and hypothetical to enter

into a rate base figure." The court relied on the Minnesota Rate Cases for the theory that the cost-of-reproduction method did not justify the acceptance of results which depended upon mere conjecture. It pointed out the necessity of distinguishing between the legislative and judicial functions; that it is the appropriate task of the commission to determine the value of the property affected by the rates it fixed, and that of the court, in deciding the question of confiscation, not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its [fol. 1225] total effect is to deny to the owner of the property a fair return for its use. It said: (p. 304) "We do not sit as a board of revision, but to enforce constitutional rights. *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 446. The legislative discretion implied in the rate making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof and the Court may not interfere with the exercise of the State's authority unless confiscation is clearly established."

In April 1934, the Supreme Court upheld the commission's order prescribing rates for telephone service in the case of *Lindheimer v. Illinois Tel. Co.*, 292 U. S. 151. It rejected the company's claim that the rates were grossly confiscatory because not based on estimates of original or book cost and reproduction cost new; for, to recognize the claim, it stated, would be to sanction "a large increase over the rates which have enabled it to operate with outstanding success. Elaborate calculations which are at war with realities are of no avail."

West Ohio Gas Co. v. Commission, 294 U. S. 63 (January [fol. 1226] 1935), reiterated the restricted function of the court declared in *Los Angeles Gas Co. v. Railroad Comm. of California*, 289 U. S. 287, saying, (p. 70) "Our inquiry in

rate case coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern Ry. Co. v. Virginia*, 290 U. S. 190) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error."

Nevertheless, less than six months later, in *West v. C. & P. Telephone Co.*, 295 U. S. 662 (June 1935), the court affirmed a decree enjoining the commission from enforcing prescribed rates because of the method employed to ascertain value, namely, by the use of price trend indices, rather than on the ground that the rate was confiscatory.

In April 1936, in *St. Joseph Stock Yards Co. v. U. S.*, 298 U. S. 38, 53, the majority of the court again reviewed the distinctive functions of commission and court, saying that the "judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence

• • • Judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency. • • •

We have said that 'in a question of rate-making there is [fol. 1227] a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing' • • • The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the ratemaking power unless confiscation is clearly established • • •"

In *Railroad Commission of California v. Pacific G. & E. Co.*, 302 U. S. 388, the court, reemphasizing the principle from *Los Angeles Gas Co. v. Railroad Commission*, *Lindheimer v. Illinois Tel. Co.*, *West Ohio Gas Co. v. Public Utilities Com.*, and other cases, refused to consider as an error amounting to a denial of due process the commission's treatment of the company's estimate of reproduction costs as without probative value. The dissenting opinion of Justice Butler, who invoked application of the *Smyth v. Ames* rule, pointed out that the California Commission consistently refused to apply the *Smyth v. Ames* criteria.

Then in *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575 (March 1942), the court again appeared to approve nonadherence to the rule of *Smyth v. Ames* by utility commissions. It upheld an interim order of rate reduction by the Federal Power Commission, acting under the Natural Gas Act of 1938, 52 Stat. 821, 15 U. S. C. Sec. 717, which required that rates and charges for transportation and sale of gas in interstate commerce should be "just and reasonable". "The gas company sought to have \$8,500,000 claimed going concern value included [fol. 1228] in the rate base. In upholding the commission the court said: "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustment which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

Finally in *Federal Power Commission v. Hope Natural Gas Company*, decided January 3, 1944, the court freed commissions from the necessity of following *Smyth v. Ames*. There the commission reduced gas rates. In testing the value of the utility property, it had omitted an item of \$17,000,000 expended for drilling operations in an unregulated period of the utility's operations, and which in the same period had been recouped from earnings by having been charged off to operating expenses. The court rejected the contentions that the rate base should reflect the reproduction cost and trended original cost, and that the well drilling costs of \$17,000,000 should have been included in the rate base. It said: "Rate-making is indeed but one species of price-fixing. *Munn v. Illinois*, 94 U. S. 113, 134. The fixing of prices, like other applications of [fol. 1229] the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid * * *. It does, however, indicate that 'fair value'

is an end product of the process of rate-making not the starting point. * * * The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated.

"We held in *Federal Power Commission v. Natural Gas Pipeline Co.*, *supra*, that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments'. *Id.*, p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. *Id.*, p. 586. Under the statutory standard of 'just and reasonable' it is the result reached and not the method employed which is controlling. Cf. *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co. v. Commission* (No. 1), 294 U. S. 63, 70; *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact [fol. 1230] that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. * * * The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the Act as unjust and unreasonable from the investor or company viewpoint." Answering other contentions the court said: "Congress has entrusted the administration of the Act to the Commission not to the courts. Apart from the requirements of judicial review it is not for us to advise the Commission how to discharge its functions."

The petitioner contends that the cases of Federal Power Commission v. Natural Gas Pipeline Co. and Federal Power Commission v. Hope Natural Gas Company are inapplicable because they involved the commodity gas, as distinguished from the use of common carrier property. The petitioner does not contend, however, that the rate base theory of public utility valuation is not applicable in the present case. That theory of evaluating public utility property as determinative of the question of confiscation was adopted by the commissions, and assumed by the court to be proper, in the cited cases. It follows that the holdings of the Supreme Court in those cases may be considered in a case involving common carriers. Therefore those cases, particularly the Supreme Court's decision in the Hope Natural Gas Company case, permits unreasonableness to be shown, not by the method employed to formulate a rate base, but by the fact that the "end result" of the commission's order interferes with the company's successful operation, its financial integrity, its ability to maintain credit and attract capital, and to compensate investors for risks assumed—in short, fails to provide a return sufficient to induce the utility enterprise to "perform completely and efficiently its functions for the public." The Supreme Court refrained from endorsing a particular method of valuation to arrive at the result of reasonableness, but left commissions free to follow *Smyth v. Ames*, or to select one or more of the heretofore recognized criteria or a different method, which, even if irregular, would not invalidate an order unless unreasonableness were clearly established. Thus responsibility for rate fixing, in so far as the law permits and requires, is placed with the commission, and unless its action is clearly shown to be confiscatory the courts will not interfere.

Section 32 of the Public Utilities Act (Stats. 1915 p. 115, as amended), empowers the California commission, after a hearing had upon its own motion or upon complaint, to make findings on the reasonableness of the rates charged by a public utility and to lower or increase the rates accordingly. By the same section the commission also has [fol. 1232] power and it is made its duty, after a hearing had on its own motion or on complaint, to determine the facilities and operation adequate to meet the public re-

quirements, and to fix the just, reasonable and adequate rates for such service.

Section 67 of the Public Utilities Act provides for a review by this court for the purpose of having the lawfulness of the order and decision of the commission inquired into. That section restricts the review to a determination of whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. It further provides that the findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as hereinafter noted, and that such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The exception to finality is that "in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petition under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the Commission material to the determination of said constitutional question shall not be final." That section also gives the court power to enter judgment either affirming or setting aside the order or decision of the commission.

[fol. 1233] That part of section 67 which requires the independent judgment of the court on the law and the facts and withholds from the commission's findings and conclusions finality on constitutional questions, was added by amendment in 1933. This court thereafter recognized that the amendment was responsive to language in certain United States Supreme Court decisions which indicated that the legislature must provide the means whereby the courts should exercise an independent judgment on the law and the facts when Federal constitutional questions were involved. (*Southern California Edison Co. v. Railroad Com.*, 6 Cal. 2d 737; *American Toll Bridge Co. v. Railroad Com.*, 12 Cal. 2d 184.) The United States Supreme Court and this court assumed to exercise such judgment without statutory language, deeming it appropriate for the protection of constitutional rights; but in the exercise thereof, as variously stated in the decisions, the reviewing court refrains from sitting as a board of revision; and will not dis-

turb the findings or conclusions of the regulatory body unless invasion of constitutional rights is clearly established. In the Edison Company case this court pointed out that the amendment added nothing which was not theretofore a part of our state law; that it did not materially affect the procedure theretofore followed in a review under the Public Utilities Act, and did not make the court a trier of disputed questions of act already resolved by the commission. We said: (p. 748) "If the mere challenge on federal constitutional grounds was intended by the amendment of [fol. 1234] 1933 to be sufficient to take the case out of the rule that the findings and conclusions of the commission in such cases should be final and beyond review, then we would have grave doubt of the power of the legislature thus to transfer to this court the traditional functions of the commission." In *American Toll Bridge Co. v. Railroad Com.*, supra, it was again stated that the amendment did not change the scope of the judicial review.

In the present proceeding, as in the recent cases of *Federal Power Commission v. Natural Gas Pipeline Co.* and *Federal Power Commission v. Hope Natural Gas Co.*, the standard for rate fixing is that of reasonableness. The petitioner herein must be charged with the burden of showing that the evidence does not support the commission's finding of value, and that the reduced rate is unreasonable and will result in confiscation of its property. That burden is coupled with a strong presumption of the correctness of the findings and conclusions of the commission. Ordinarily a public utility is a monopoly and is not subject to the travail of competition. Because of its monopolistic character, public interest requires that it submit to regulation for the protection of the consumer, and the utility in return is entitled to protection of its investor interest. In the case of monopolistic utilities it is possible to say that regulation to accomplish the two-fold purpose may be a relatively simple matter. But here the commission was confronted with facts which are unusual in utility rate regulation. It was faced with the problem of evaluating the property of a utility [fol. 1235] which was in direct competition with a municipal utility offering similar service in the same community, in large part serving the same territory, and over which the commission had no regulatory power. From the year 1912, when a competitive system of street car operation was established in San Francisco under municipal regulation,

such obstacles to profitable operation by the commission regulated utility were created that commission regulation in effect gave way to regulation by competition. The evidence is clear that during the early competitive period and until the abnormal stimulation in public use brought about by the present world war, competition necessitated operation at a loss. Since the commencement of competition the company has not devoted to replacement and repair the amounts charged off on its books for those purposes, and its charges to depreciation reserve were lower than the actual annual plant consumption. In this connection it is significant that for tax purposes the company's accrued depreciation figure [fol. 1236] was shown to be \$26,834,000, and its total depreciation reserve figure only \$9,902,000. The factors which affected the value of the investment in this case justified the commission in refusing to follow the practice of adopting as an annual charge to plant consumption the company's book depreciation reserve or any other hypothetical sum approved by accounting practices. The evidence supports the conclusion that the company permitted unusual deterioration in view of negotiations for sale to the city started many years ago. The ordinary methods or theories of depreciation accounting therefore would not reflect the true record of the past annual plant consumption and the result, were such methods adopted, would not be in conformity with the facts. On the other hand, the evidence of obsolescence, depletion, depreciation and deterioration is such as to justify the commission's observation that there was no available or procurable evidence of the fair value of the property except the amount contained in the company's offer to sell to the city, made in the period when the business was profitable. Acceptance of the company's book figures or of the amount of outstanding capitalization, in order to arrive at the present worth of the properties, would result in a figure inflated so far above fair value as to impede the commission's authorized regulatory effort to restore the company as a useful public servant performing its functions adequately. Capitalization in any event has little relation to the depreciated value of the investment. Also going concern value can have little if any place in the [fol. 1237] rate base under the facts except as the special factor of competition has so affected that value as to indicate it at nil. Separate appraisal of the going concern ele-

ment is not required. (Federal Power Com. v. Natural Gas Pipeline Co., supra.)

It cannot be said that under the facts of this case arbitrary action resulted merely from the commission's rejection of book values and capitalization, its refusal to make precise estimates of actual deterioration, of going concern or other values, and its acceptance of the company's offer of sale to the city made in a profitable period as the best evidence of the fair value of the utility in the present condition of its operative properties. The commission expressly refrained from considering whether the amount of the offer in relation to value under all the conditions was not too high. Furthermore, it appears that studies of valuation for sale purposes were also made by the city and by the commission, and only after such studies was a sale price selected which was deemed commensurate with the fair value of the property under existing conditions.

It is the real and not the nominal paper valuation that determines the amount of the investment on which the utility is entitled to a return. (See Pond, Public Utilities, Fourth Ed., Vol. 2, pp. 1117, 1118.) As said in *Lindheimer v. Illinois Tel. Co.*, 292 U. S. 151, the "actual experience of the company is more convincing than tabulations of estimates . . .

Elaborate calculations which are at war with realities are of no avail." There is no fundamental or statutory law which will preclude the commission from [fol. 1238] evaluating a public utility in accordance with the actualities. So to proceed is not to take private property for public use without compensation. There is no denial of due process in rejecting conjectural and unsatisfactory estimates of value, or in treating the petitioner's estimates as without probative value. (*Railroad Com. of Calif. v. Pacific G. & E. Co.*, 302 U. S. 388, 397-398.) As was said in *Los Angeles Gas Co. v. Railroad Com.*, 289 U. S. 287, 306, "The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. The time and circumstances of the outlay, and the effect of altered conditions demand consideration."

The petitioner has not shown that the results are not in accord with the realities. Both before the commission and in this court it contented itself merely with urging that the commission proceeded erroneously in selecting for rate

making purposes the offer price of \$7,950,000, because, so it claims, that figure was based on a capitalization of earnings. The petitioner made no offer or attempt to show that the value fixed by the commission did not represent either the true depreciated legitimate cost or the true depreciated actual cost. In *Minnesota Rate Cases*, 230 U. S. 352, 566, it was said that "the company having assailed the constitutionality of the state acts and orders was bound to establish its case, and it was not entitled to rest on expressions of judgment when it had it in its power to present accurate data which would permit the court to draw the right conclusion." Since it is impossible to say in the light of the evidence in this proceeding that the figure selected by the commission does not bear a proper relation to the fair value of the utility under existing conditions, it must be concluded that the petitioner has not shown arbitrary action on the part of the commission in selecting the sale offer price as the rate base, or that the evidence does not support the commission's finding that the figure selected represents at least fair value, if not more than that.

The petitioner has also failed to meet the burden cast upon it to establish that the return on the rate base under the reduced fare will prevent the utility's functioning adequately from the company or investor standpoint. The commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenues, expenses, and other costs. This court will not disturb its findings on those disputed questions of fact. The company is now and for several years has been doing an abnormally increased traffic business with returns greatly in excess of its operating costs plus increased reserves for depreciation and taxes. It does not question that under a seven cent fare it has enjoyed a return of more than a fair percentage above the constitutional line of confiscation on the fair value as found by the commission. Nor is it questioned that a return of six per cent on the value of its capital investment is unconstitutional. The petitioner claims that the commission's estimates are false, and that falsity resides in the fact that at the prevailing cost per head for passenger transportation, it will suffer a deficit on the estimated volume of increased traffic at the six cent fare. The fallacy, however, is in the assumption that the cost ratio under the

six cent fare will be the same as under the seven cent fare. The commission answers that the assumption is not true, inasmuch as the increase in traffic is expected, not necessarily in the peak hours, but in large part from the patronage in off hours which was diverted to Municipal Railway, or discontinued upon the inception of the higher rate, and which is expected to be regained materially upon the reduction of the fare and the improvement of the service. The petitioner also claims that the commission did not consider the evidence of a probable increase in labor costs pursuant to pending negotiations with labor unions. The commission on the other hand states that it did give consideration to that element. The commission's figures, with increased allowances for operating expenses, depreciation and taxes, must be deemed to resolve these disputed points adversely to the petitioner. "Long operation and adequate records make forecasts of net operating revenues fairly certain." (*Driscoll v. Edison Co.*, 307 U. S. 104, 120.)

The foregoing discussion demonstrates that the interests of the investor have received constitutional protection by the action of the commission. Under rule by competition and the consequent great deterioration in its capital investment, the utility's ability to attract capital has undoubtedly [fol. 1241] suffered. But this is not an element that can be controlled by the regulatory body beyond the possibility of insuring to the utility a fair return on the value of the capital investment when business is profitable. The fact that the utility has suffered deficits in the past does not justify excessive profits in the future. (*Los Angeles Gas Co. v. Railroad Com.*, 289 U. S. 287, 313; *Federal Power Com. v. Natural Gas Pipeline Co.*, 315 U. S. 575, 590.) "When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost or quality of service." (*West Ohio Gas Co. v. Comm.* (No. 1), 294 U. S. 63, 72.)

The record is also clear that the commission has not been arbitrary in acting for the protection of the public which is under compulsion to use the present depleted and inadequate service, or which may be expected to make use of an improved service. As the commission said in its opinion, "After making such allowance [for war time difficulties] the important question remains to what extent the ratepayer, under war conditions, should be compelled to pay the same or higher rates for an inadequate and inferior

service while the utility enjoys abnormal profits." It is unnecessary to consider whether the seven cent fare would still be unreasonable were the petitioner performing a fully adequate and efficient service. The findings of inadequacy in the maintenance and service are supported by the evidence. The commission is empowered under the statute in fixing the fare to take into consideration the quality of the facilities and service. The commission decided that [fol. 1242] even in war time improvement was possible, and that the value of the improved service would be no more than six cents. The problem of the value of the service, and the correctness of the commission's decision on the consumer interest, do not involve constitutional questions, so long as otherwise the investor or company interest has received adequate consideration by the commission. When the company interest has received constitutional protection, the findings of the commission on the consumer interest become final in the proceeding. The question involving that interest then has been answered by the commission correctly pursuant to the statute and the authorities to the effect that the reasonableness of rates should not be considered apart from the adequacy of the service, and that the public should not be charged more than the service is reasonably worth. The statute is a legislative recognition of the public's right to demand that consideration be given to the value of the service. (Covington etc. Turnpike Co. v. Sandford, 164 U.S. 578, 596; Spring Valley Water Works v. San Francisco, 192 Fed. 137; see Article, Value of the Service as a Factor in Rate-Making, 32 Har. Law Rev. 516.)

In the final analysis the question whether the right to just compensation for the service rendered has been denied to the utility depends upon the special facts in the case. (The Minnesota Rate Cases, 230 U. S. 352, 434.) Each case must be controlled by its own circumstances. (Los Angeles Gas Co. v. Railroad Com., 289 U. S. 287, 315.) Pragmatic adjustments depend upon the particular facts. (Federal [fol. 1243] Power Com. v. Natural Gas Pipeline Co., *supra*.) It does not appear from the facts in this record that the rate fixed by the commission is so unreasonably low as to call for a declaration that Market Street Railway Company has been deprived of its property without due process of law or without just compensation.

The petitioner asserts some errors in the admission and consideration of statistical and other documentary evidence. It is not the function of the reviewing tribunal in these proceedings to set aside the legislative finding for mere errors of procedure not amounting to lack of due process. Its duty is to ascertain whether the legislative process has resulted in confiscation. (West v. C. & P. Tel. Co., 295 U. S. 662, 674.)

The petitioner objects to the apparent indeterminate duration of the experimental period under the six cent fare fixed by the commission. The commission still has jurisdiction and if from the monthly reports filed by the company during a reasonable experimental period it appears that the expected increase in passenger traffic on the utility system due to the reduction in fare and improvement in service does not materialize, the commission has the power to make appropriate adjustments. As the prescribed rate is expressly stated to be tentative, there is no ground for assuming that the commission will reject an application to make such changes as experience may show to be necessary in order to produce the stipulated revenue. (Clark's Ferry Co. v. Commission, 291 U. S. 227, 241.)

[fol. 1244] The order is affirmed.

Shenk, J.

We concur: Gibson, C. J.; Curtis, J.; Edmonds, J.; Carter, J.; Traynor, J.; Schauer, J.

[fol. 1245] IN THE SUPREME COURT OF CALIFORNIA

In Bank

MARKET STREET RAILWAY CO.

vs.

RAILROAD COMMISSION, ETC., et al.

ORDER DENYING REHEARING—Filed July 27, 1944

By the Court

Petition for a rehearing is denied.

Dated Jul 27, 1944

(Signed) Shenk, Acting Chief Justice.

[File endorsement omitted.]

[fol. 1246] IN THE SUPREME COURT OF CALIFORNIA

Bank, San Francisco, No. 16988

MARKET STREET RAILWAY COMPANY, Petitioner

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and
Frank R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachse and Frank W. Clark, the members of
and constituting the Railroad Commission of the State
of California, Respondents.

JUDGMENT—July 1, 1944

On review from the Railroad Commission of the State of
California

The above entitled matter having been heretofore fully
argued, and submitted and taken under advisement, and
all and singular the law and premises having been fully
considered,

It is Ordered, Adjudged and Decreed by the Court that
the Order of the Railroad Commission of the State of
California, in the above entitled matter is hereby affirmed.

I, A. V. Haskell, Clerk of the Supreme Court of the State
of California, do hereby certify that the foregoing is a true
copy of an original judgment entered in the above entitled
cause on the 1st day of July, 1944; and now remaining of
record in my office.

Witness my hand and the seal of the Court, affixed at
my office, this 1st day of August, A. D. 1944.

A. V. Haskell, Clerk, by I. M. Johnson, Deputy.

[fol. 1247] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

APPEARANCE OF THE ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA ON BEHALF OF SAID STATE—Filed July 6,
1944

Comes now Robert W. Kenny, Attorney General of the
State of California, appearing for the State of California.
On behalf of the State of California, the Attorney General

requests notice of any and all motions, matters or proceedings affecting the order staying and suspending the decision and order of the respondent, Railroad Commission, referred to in the order of this Court made herein on March 8, 1944, and particularly to any and all motions, matters or proceedings concerning the disposition of all excess charges or monies which petitioner has unsuccessfully attempted to refund.

Robert W. Kenny, Attorney; Clarence A. Linn,
Deputy Attorney General.

[fol. 1248] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER
FOR REVERSAL—Filed July 31, 1944

PETITION FOR APPEAL

To the Honorable Phil S. Gibson, Chief Justice of the Supreme Court of the State of California:

Comes now the appellant in the above entitled cause, Market Street Railway Company, and respectfully shows:

On July 1, 1944, the Supreme Court of the State of California rendered its final decision and judgment in the above entitled cause affirming the order of appellees, Railroad Commission of the State of California and Franck R. Havenner, C. C. Baker, Justus F. Craemer, Richard Sachse and Frank W. Clark, the members of and constituting the Railroad Commission of the State of California, rendered on November 30, 1943, in the record and proceedings in said cause. In said cause there was drawn in question the validity of said order on the ground of its being repugnant to the due process of law clause of the Fourteenth Amendment to the Constitution of the United States and the judgment of said court was in favor of its validity.

Considering itself aggrieved by said final decision of the Supreme Court of the State of California in the above entitled cause, appellant therein, Market Street Railway Com-

pany, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said appellant, Market Street Railway Company, assigns the following errors in the record and proceedings in the said cause:

1. The Supreme Court of the State of California erred in sustaining the order of the Railroad Commission of the State of California, and in holding and deciding that said order does not confiscate appellant's property and does not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was entered without notice to appellant and without affording appellant an opportunity for hearing as required by said Amendment, and in particular in that appellant at no time was put on adequate notice that its [fol. 1250] rates were under attack or afforded adequate opportunity for a hearing on the issue of the reasonableness of its rates: the proceeding before the Commission was instituted by a general notice of inquiry; at no time before or during the hearing was any issue framed as to the reasonableness of appellant's rates nor was appellant by any other means given notice that the reasonableness of its rates was questioned or in issue; on the contrary the proceedings were so conducted and such statements were made as affirmatively to lead appellant to believe that its rates were not in issue.

3. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that after said order was entered without adequate notice to appellant

and without affording appellant adequate opportunity for a hearing on the issue of the reasonableness of its rates as required by said Amendment, the Commission refused to grant appellant's petition for rehearing and afford it an opportunity as requested, before the effective date of the Commission's order, to introduce evidence and be heard on said issue.

4. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order is not supported by substantial or any evidence, and in particular was made without substantial or any evidence (1) that appellant's present rates are unreasonable, (2) that the 6-cent fare is reasonable, (3) of the value of [fol. 1251] appellant's service which erroneously was adopted as a criterion for rate fixing, (4) of the fair value of appellant's property devoted to the public use, (5) of the following facts essential to a determination of the reasonableness of appellant's present rates and the rate prescribed for the future: (a) the amount of traffic moving under appellant's present 7-cent fare in San Francisco, (b) the present revenue from said traffic, (c) the expense of handling said traffic, (d) the capital used in rendering such service, (e) the traffic that would move under the reduced fare as ordered, (f) the revenue from that traffic, and (g) the expense of handling such traffic.

5. The Supreme Court of the State of California erred in holding and deciding that the Commission, in formulating its order herein, could, as it did, refer to its "experience" and "data at hand" forming no part of the record, "from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenue, expenses, and other costs," said holding being erroneous for the reason that it sustains the validity of an order based on conjecture, surmise, and matters outside the record, contrary to the provisions of the due process of law clause of section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and

did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was based on matters outside the record, and particularly upon data taken from monthly reports of appellant [fol. 1252] lant, which reports were not introduced in evidence but were used and referred to by the Commission in support of its order without the knowledge or consent of appellant and without affording appellant any opportunity to explain, clarify, or cross-examine with respect to the information contained in said monthly reports.

7. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the rate reduction imposed by said order was based upon the "value" of appellant's service and not upon a fair rate of return upon the fair value of appellant's property devoted to public use, or upon a rate of return which would enable appellant to operate successfully to maintain its financial integrity, and to compensate its investors for the risks assumed, and further in that the Commission arrived at the "value" of said service (i. e., the amount of the fare fixed in the order) upon the basis of its own conjecture and not upon evidence.

8. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was based upon a valuation of appellant's property at \$7,950,000, the price at which appellant's board of directors authorized the sale of its property to the City and County of San Francisco, which amount the Commission held to be the amount at which appellant had offered to sell its property to the City and County of San Francisco, whereas in truth said amount was never approved either by appellant's stockholders or the voters of San Francisco [fol. 1253] cisco, did not constitute an "offer," and is not competent or any evidence of the fair value of appellant's property.

9. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order and the rate imposed thereby was based upon the valuation aforesaid without giving any consideration to reproduction cost, historical cost, prudent investment, capitalization, or any lawful or accepted method of arriving at the value of the property of a public utility for rate-making purposes, and without giving any consideration to whether said rate would yield a return sufficient to enable appellant to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed.

10. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the evidence establishes that the 6-cent fare imposed by said order will not afford appellant a fair return upon its property devoted to public use, but on the contrary will result in a reduction of appellant's gross operating revenue to a point where it will have no net income at all and will suffer a substantial deficit, and in that said fare, aside from the question of the value of appellant's property, will not enable appellant to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its [fols. 1254-1400] investors for the risks assumed.

Pp. 1255-1400 Rule 12; omitted.

11. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order is without support in the evidence, is contrary to the evidence, and will result in the confiscation of appellant's property.

12. The Supreme Court of the State of California erred in failing to accord to appellant a judicial review upon the court's independent judgment as to the facts with respect

to each of the constitutional rights herein asserted; instead, the court sustained the Commission on the ground that there was some evidence to support its order, without regard to the probative force of the evidence, and without independently considering the facts.

PRAYER FOR REVERSAL

For which errors the appellant, Market Street Railway Company, prays that the said judgment of the Supreme Court of the State of California, rendered July 1, 1944, in the above entitled cause, be reversed, and a judgment rendered in favor of the said appellant, and for costs.

Dated: July 31, 1944.

Cyril Appel, Felix T. Smith, Francis R. Kirkham,
Henry G. Hayes, Counsel for Appellant.

Pillsbury, Madison & Sutro, of Counsel.

[fol. 1401] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 31, 1944

The appellant in the above entitled cause having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in said cause by the Supreme Court of the State of California on July 1, 1944, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is *Ordered* that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause as provided by law, and it is further *Ordered* that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, [fol. 1402] proceedings and judgment in said cause and transmit the same to the Supreme Court of the United

States, so that he shall have the same in said court within sixty days of this date.

And it is further *Ordered* that the stay of the decision and order of appellees, heretofore granted by order of the Supreme Court of the State of California in said cause on March 8, 1944, shall remain in full force and effect upon the terms fixed in said order throughout the pendency of the said appeal proceedings.

And it is further *Ordered* that security for costs on appeal be fixed in the sum of five hundred dollars (\$500), and that upon approval of bond in said amount this order shall operate as a supersedeas.

Dated: July 31, 1944.

Phil S. Gibson, Chief Justice of the Supreme Court
of the State of California.

[fols. 1403-1405] (Bond of appellant for costs, approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas, omitted in printing.)

[fols. 1406-1415] (Citation, with acknowledgment of service endorsed thereon, filed July 31, 1944, omitted in printing.)

[fol. 1416] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE—Filed September 6, 1944

To the Clerk of the Supreme Court of the State of California:

You are hereby requested to prepare a transcript of the record in this cause and to transmit it to the Clerk of the Supreme Court of the United States, at Washington, D. C., duly certified and authenticated, and within the time prescribed by the Rules of the Supreme Court of the United States, consisting of the following documents and portions of the records in this cause, which constitute the

record on appeal to the Supreme Court of the United States:

1. Petition of appellant to the Supreme Court of the State of California for writ of review, including the exhibits attached thereto.

[fol. 1417] 2. Answer of Railroad Commission to petition for writ of review.

3. Reply of appellant to answer of Railroad Commission to petition for writ of review.

4. Order of the Supreme Court of the State of California granting writ of review.

5. Amendment to order of the Supreme Court of the State of California granting writ of review.

6. Writ of review.

7. Return of Railroad Commission to writ of review.

8. Stipulation re supplemental return of Railroad Commission to writ of review and supplemental return.

9. The following documents attached to the return and to the supplemental return, respectively referred to in paragraphs 7 and 8 above, and constituting the entire record of the proceedings before the Railroad Commission:

(a) Documents attached to the return referred to in paragraph 7 above:

Pleadings

1. Order Instituting Investigation into the reasonableness of rates, etc., of Market Street Railway Company, filed April 22, 1943, Case No. 4680.

2. Affidavit of Service of order instituting investigation, filed April 22, 1943.

3. Notice of Hearing setting Case No. 4680 for hearing on May 10, 1943, dated April 22, 1943.

4. Notice of Adjourned Hearing, set for July 15, 1943, dated June 9, 1943.

5. Decision No. 36739 issued by Railroad Commission on November 30, 1943, including concurring opinion of Commissioner Sachse and concurring opinion of Commissioners Baker and Craemer.

6. Petition for Rehearing, filed by Market Street Railway Company on December 9, 1943.

[fol. 1418] 7. Order Granting Oral Argument on petition for rehearing, issued December 15, 1943.

8. Notice of Hearing of Oral Argument set for February 3, 1944, dated February 2, 1944.

9. Decision No. 36821, Opinion and Order Denying Re-hearing, issued by Railroad Commission on January 12, 1944.

10. Petition for extension of effective date of Decision No. 36739, filed by Market Street Railway Company on February 1, 1944.

11. Decision No. 36852, order postponing effective date of Decision No. 36739.

Exhibits

12. Ex. 1. Comparative and combined income statements of Market Street Railway Company and Municipal Railway, 1932 through 1942, and 1942 and the first three months of 1943 by months; charts showing fare passengers, passenger revenue, and operating revenue and distribution of expenses, filed May 10, 1943.

13. Ex. 2. Comparative balance sheet, analysis of profit and loss account, comparative income statement, operating revenues and expenses, all for the years 1938-1942, both inclusive, filed May 10, 1943.

14. Ex. 3. Tabulation showing revenue rolling stock of Market Street Railway Company as of May 1, 1943, filed May 10, 1943.

15. Ex. 4. Summary of causes of "turn-in" of Street cars, March and April of 1943, filed May 10, 1943.

16. Ex. 5. Operative motor coach equipment in service May 1, 1943, filed May 10, 1943.

17. Ex. 6. Traffic check, summary of travel characteristics at selected locations, including Municipal Railway lines at Market Street at Van Ness, filed May 10, 1943.

18. (Ex. 7. This is to be certified as an original exhibit. See paragraph 23(a) 1 of this precept.)

19. Ex. 8. Excerpt from minutes of directors' meeting of September 24, 1942, Market Street Railway Company, re sale of operative properties to City of San Francisco, filed July 15, 1943.

[fol. 1419] 20. Ex. 9. Excerpt from minutes of directors' meeting of March 25, 1943, Market Street Railway Company, re sale of operative properties to City of San Francisco, filed July 15, 1943.

21. Ex. 10. Report on the results of operation of Market Street Railway Company, 1922-1942, filed July 15, 1943.

22. Ex. 11. Tables and charts relating to manpower and service, filed July 15, 1943.

23. (Ex. 12. This is to be certified as an original exhibit. See paragraph 23(a)2 of this praecipe.)

24. (Ex. 13. This is to be certified as an original exhibit. See paragraph 23(a)3 of this praecipe.)

25. (Ex. 14. This is to be certified as an original exhibit. See paragraph 23(a)4 of this praecipe.)

26. (Ex. 15. This is to be certified as an original exhibit. See paragraph 23(a)5 of this praecipe.)

27. (Ex. 16. This is to be certified as an original exhibit. See paragraph 23(a)6 of this praecipe.)

28. Ex. 17. Report dealing with service on Market Street Railway, filed July 15, 1943.

29. Ex. 18. Chart, flow of street car and bus traffic on and across Market Street, traffic in maximum one hour period 4:30 p. m. to 5:30 p. m., May 24, 26 and 28, 1943, filed September 15, 1943.

30. Ex. 19. Supplemental indenture, Market Street Railway Company and Wells Fargo Bank & Union Trust Co., dated April 1, 1940, filed September 15, 1943.

31. Ex. 20. Changes proposed by Division 1004, A. A. of S. E. R. and M. C. E. of A. in the agreement with Market Street Railway Company, filed September 15, 1943.

32. Ex. 21. Expansion of service rendered by the Municipal Railway of San Francisco, filed September 15, 1943.

33. Ex. 22. A study to determine the net income of Market Street Railway Company for the first six months of calendar years 1937, 1938 and 1939 if a 5-cent fare with free transfers had been in effect, filed September 15, 1943.

[fol. 1420] 34. Ex. 23. Statement re platform personnel, wages, etc., of Municipal Railway, filed September 15, 1943.

35. Ex. 24. Railroad Commission Decision No. 31472, dated November 22, 1938, on Application No. 21115, filed September 15, 1943.

36. Ex. 25. Railroad Commission Decision No. 31603, dated December 27, 1938, on Application No. 21115, filed September 15, 1943.

37. Ex. 26. Statement re manpower and employment, Market Street Railway Company, filed September 15, 1943.

38. Ex. 27. Service complaints received by Market Street Railway Company from the Railroad Commission, year 1943, filed September 15, 1943.

39. Ex. 28. Service complaints received by Market Street Railway Company by letters from patrons, year 1943, filed September 15, 1943.

40. Ex. 29. Changes in operating practices, revision of routes in accordance with directives or suggestions of the Office of Defense Transportation, filed September 15, 1943.

41. Ex. 30. Statement re inspectors, Market Street Railway Company, filed September 15, 1943.

42. Ex. 31. Statement re service to shipyards and war industries, filed September 15, 1943.

43. Ex. 32. Letter of September 9, 1943, from Office of Defense Transportation to Market Street Railway Company, filed September 15, 1943.

44. Ex. 33. Statement re actual revenue passengers and car and bus hours for the first six months of 1937, 1938 and 1939, etc., filed pursuant to Transcript, p. 342.

Transcripts

45. Volume 1. Transcript, Hearing at San Francisco (pages 1 to 53, inclusive). May 10, 1943.

46. Volume 2. Transcript, Hearing at San Francisco (pages 54 to 169, inclusive). July 15, 1943.

[fol. 1421] 47. Volume 3. Transcript, Hearing at San Francisco (pages 170 to 343, inclusive). September 15, 1943.

48. Volume 4. Transcript, Hearing at San Francisco (pages 344 to 461, inclusive). December 21, 1943.

49. Volume 5. Transcript, Hearing at San Francisco (pages 462 to 547, inclusive). December 22, 1943.

50. Volume 6. Transcript, Hearing at San Francisco (pages 548 to 585, inclusive). February 3, 1944.

(b) Documents attached to the supplemental return referred to in paragraph 8 above:

1. (Annual reports of Market Street Railway Company, filed with the Railroad Commission for the years 1938 to 1942, inclusive, are to be certified as original exhibits. See paragraphs 23(b)1 to 5, inclusive, of this praecipe.)

2. (Annual reports of Market Street Railway Company to its stockholders for the years 1938 to 1942, inclusive, are to be certified as original exhibits. See paragraphs 23(b)6 to 10, inclusive, of this praecipe.)

3. (The Monthly Reports of the Market Street Railway Company to the Railroad Commission from January 1938

to April 1943, inclusive, are to be certified as original exhibits. See paragraphs 23(b)11 to 16, inclusive, of this praecipe.)

4. Exhibit No. 45 in Application No. 21115, Revised Col. 7 and Col. 8 of Exhibit No. 36, etc.

5. Exhibit No. 46 in Application No. 21115, Table re revenue June to September, 1938, inclusive, etc.

6. Exhibit No. 6 in Application No. 21115, Estimated effect of change in fare structure in 1938.

7. Exhibit No. 17 in Application No. 21115, Estimated effect of 7-cent fare in 1938.

8. Exhibit No. 23 in Application No. 21115, Estimated effect of 6-cent fare in 1938.

[fol. 1422] 10. Decision of the Supreme Court of the State of California, dated July 1, 1944, affirming Railroad Commission Decision No. 36739.

11. Order of the Supreme Court of the State of California denying petition for rehearing.

12. Remittitur issued out of the Supreme Court of the State of California to the Railroad Commission August 1, 1944.

13. Appearance of the Attorney General of the State of California on behalf of said State.

14. Petition of appellant for allowance of appeal to the Supreme Court of the United States, assignment of errors, and prayer for reversal.

15. Statement of appellant respecting jurisdiction of the Supreme Court of the United States.

16. Order of the Chief Justice of the Supreme Court of the State of California allowing appeal and further staying Railroad Commission Decision No. 36739 pending appeal.

17. Bond of appellant for costs approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas.

18. Citation.

19. Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

20. Statement of Railroad Commission opposing jurisdiction and motion to dismiss or affirm.

21. This praecipe.

22. The certificate of the Supreme Court of the State of California.

23. Upon obtaining an order from the Chief Justice of [fol. 1423] the Supreme Court of the State of California for their safekeeping, transportation and return, pursuant to Rule 10, paragraph 4, of the Revised Rules of the Supreme Court of the United States, please certify separately and forward to the Clerk of the Supreme Court of the United States, at Washington, D. C., the following original documents:

(a) Documents attached to the return referred to in paragraph 7 above:

1. Ex. 7. Report of the obligations as to the use of streets and condition of streets used by the Market Street Railway Company, filed July 15, 1943.

2. Ex. 12. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

3. Ex. 13. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

4. Ex. 14. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

5. Ex. 15. Photograph, Third and Market Streets, taken on June 15, 1943, 5:30 p. m., filed July 15, 1943.

6. Ex. 16. Photograph of storage yard at Irving Street, Lincoln Way, Funston Avenue and 14th Avenue, taken on July 14, 1943, at 10:30 a. m., filed July 15, 1943.

(b) Documents attached to supplemental return, referred to in paragraph 8 above:

1. 1938 Annual Report of Market Street Railway Company to Railroad Commission.

2. 1939 Annual Report of Market Street Railway Company to Railroad Commission.

3. 1940 Annual Report of Market Street Railway Company to Railroad Commission.

4. 1941 Annual Report of Market Street Railway Company to Railroad Commission.

[fol. 1424] 5. 1942 Annual Report of Market Street Railway Company to Railroad Commission.

6. 1938 Annual Report of Market Street Railway Company to Stockholders.

7. 1939 Annual Report of Market Street Railway Company to Stockholders.

8. 1940 Annual Report of Market Street Railway Company to Stockholders.

9. 1941 Annual Report of Market Street Railway Company to Stockholders.

10. 1942 Annual Report of Market Street Railway Company to Stockholders.

11. 1938 Monthly Reports of Market Street Railway Company.

12. 1939 Monthly Reports of Market Street Railway Company.

13. 1940 Monthly Reports of Market Street Railway Company.

14. 1941 Monthly Reports of Market Street Railway Company.

15. 1942 Monthly Reports of Market Street Railway Company.

16. Monthly Reports of Market Street Railway Company, January, 1943, to April, 1943, inclusive.

Dated at San Francisco, California, this 7th day of September, 1944.

Cyril Appel, Felix T. Smith, Francis R. Kirkham,
Attorneys for Appellant.

Received copy of the within praecipe this 7th day of September 1944.

Everett C. McKeage, Roderick B. Cassidy, Wyman
C. Knapp, Frank B. Austin, John Gregory, Attys:
for Appellees.

[fol. 1424a] [File endorsement omitted.]

[fols. 1425-1428] IN SUPREME COURT OF CALIFORNIA

[fol. 1429] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 1430] IN SUPREME COURT OF CALIFORNIA IN BANK

[Title omitted]

ORDER RE ORIGINAL EXHIBITS

It appearing that appellant herein has been granted an appeal to the Supreme Court of the United States and that an inspection of the original exhibits on file will be necessary for the determination of said appeal:

It Is Ordered that the Clerk of this Court transmit to the Supreme Court of the United States all of the exhibits here on file as listed under Paragraph 23(a) and 23(b) of Praecipe, said exhibits to remain in the custody of the Clerk of the Supreme Court of the United States until the final determination of proceedings on appeal thereupon to be returned to the Clerk of this Court, as provided in Rule 10, sec. 4, of the Rules of the Supreme Court of the United States.

Dated: September 18, 1944.

Gibson, Chief Justice.

[fol. 1431] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

CERTIFICATE RE ORIGINAL EXHIBITS

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the attached exhibits, enumerated and described in the following list, are original exhibits presented in evidence in the above entitled proceeding and constitute part of the original file of this office in said matter:

Ex. 7. Report of the obligations as to the use of streets and condition of streets used by the Market Street Railway Company, filed July 15, 1943.

Ex. 12. Photograph, Kearny and Market Streets, taken on June 16, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

Ex. 13. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

Ex. 14. Photograph, Kearny and Market Streets, taken on June 15, 1943, between 5 p. m. and 5:20 p. m., filed July 15, 1943.

Ex. 15. Photograph, Third and Market Streets, taken on June 15, 1943, 5:30 p. m., filed July 15, 1943.

Ex. 16. Photograph of storage yard at Irving Street, Lincoln Way, Funston Avenue and 14th Avenue, taken on July 14, 1943, at 10:30 a. m., filed July 15, 1943.

1938 Annual Report of Market Street Railway Company to Railroad Commission.

1939 Annual Report of Market Street Railway Company to Railroad Commission.

1940 Annual Report of Market Street Railway Company to Railroad Commission.

1941 Annual Report of Market Street Railway Company to Railroad Commission.

[fol. 1432] 1942 Annual Report of Market Street Railway Company to Railroad Commission.

1938 Annual Report of Market Street Railway Company to Stockholders.

1939 Annual Report of Market Street Railway Company to Stockholders.

1940 Annual Report of Market Street Railway Company to Stockholders.

1941 Annual Report of Market Street Railway Company to Stockholders.

1942 Annual Report of Market Street Railway Company to Stockholders.

1938 Monthly Reports of Market Street Railway Company.

1939 Monthly Reports of Market Street Railway Company.

1940 Monthly Reports of Market Street Railway Company.

1941 Monthly Reports of Market Street Railway Company.

1942 Monthly Reports of Market Street Railway Company.

Monthly reports of Market Street Railway Company, January, 1943, to April, 1943, inclusive.

Pursuant to order of the Chief Justice of the Supreme Court of California these exhibits shall remain with the

Supreme Court of the United States until proceedings are concluded and shall thereafter be returned to the Clerk of this Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Court this 18th day of September, A. D. 1944.

A. V. Haskell, Clerk of the Supreme Court of the State of California, by J. M. Johnson, Chief Deputy. (Seal.)

(Original documents separately certified and forwarded to the Clerk of the Supreme Court of the United States to be considered by this Court as original papers under Revised Rules of the Supreme Court of the United States, Rule 10, paragraph 4, omitted in printing.)

[fol. 1433] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed September 21, 1944.

PETITION FOR APPEAL

To the Honorable Phil S. Gibson, Chief Justice of the Supreme Court of the State of California:

Considering itself aggrieved by the final decision of the Supreme Court of the State of California in the above entitled cause, appellant therein, Market Street Railway Company, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS.

And the said appellant, Market Street Railway Company, assigns the following errors in the record and proceedings in the said cause:

1: The Supreme Court of the State of California erred in sustaining the order of the Railroad Commission of the State of California, and in holding and deciding that said

order does not confiscate appellant's property and does not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was entered without notice to appellant and without affording appellant an opportunity for hearing as required by said Amendment, and in particular in that appellant at no time was put on adequate notice that its rates were under attack or afforded adequate opportunity for a hearing on the issue of the reasonableness of its rates: the proceeding before the Commission was instituted by a general notice of inquiry; at no time before or during the hearing was any issue framed as to the reasonableness of appellant's rates nor was appellant by any other means given notice that the reasonableness of its rates was questioned or in issue; on the contrary the proceedings were so conducted and such statements were made as affirmatively to lead appellant to believe that its rates were not in issue.

3. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth [fol. 1435] Amendment to the Constitution of the United States, in that after said order was entered without adequate notice to appellant and without affording appellant adequate opportunity for a hearing on the issue of the reasonableness of its rates as required by said Amendment, the Commission refused to grant appellant's petition for rehearing and afford it an opportunity as requested, before the effective date of the Commission's order, to introduce evidence and be heard on said issue.

4. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order is not supported by substantial or any evi-

dence, and in particular was made without substantial or any evidence (1) that appellant's present rates are unreasonable, (2) that the 6-cent fare is reasonable, (3) of the value of appellant's service which erroneously was adopted as a criterion for rate fixing, (4) of the fair value of appellant's property devoted to the public use, (5) of the following facts essential to a determination of the reasonableness of appellant's present rates and the rate prescribed for the future: (a) the amount of traffic moving under appellant's present 7-cent fare in San Francisco, (b) the present revenue from said traffic, (c) the expenses of handling said traffic, (d) the capital used in rendering such service, (e) the traffic that would move under the reduced fare as ordered, (f) the revenue from that traffic, and (g) the expense of handling such traffic.

5. The Supreme Court of the State of California erred in holding and deciding that the Commission, in formulating its order herein, could, as it did, refer to its "ex-[fol. 1436] perience" and "data at hand" forming no part of the record, "from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenue, expenses, and other costs," said holding being erroneous for the reason that it sustains the validity of an order based on conjecture, surmise, and matters outside the record, contrary to the provisions of the due process of law clause of section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was based on matters outside the record, and particularly upon data taken from monthly reports of appellant, which reports were not introduced in evidence but were used and referred to by the Commission in support of its order without the knowledge or consent of appellant and without affording appellant any opportunity to explain, clarify, or cross-examine with respect to the information contained in said monthly reports.

7. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid

and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the rate reduction imposed by said order was based upon the "value" of appellant's service and not upon a fair rate of return upon the fair value of appellant's property devoted to public use, or upon a rate of return which would enable appellant to operate successfully to maintain [fol. 1437] its financial integrity, and to compensate its investors for the risks assumed, and further in that the Commission arrived at the "value" of said service (i. e., the amount of the fare fixed in the order) upon the basis of its own conjecture and not upon evidence.

8. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order was based upon a valuation of appellant's property at \$7,950,000, the price at which appellant's board of directors authorized the sale of its property to the City and County of San Francisco, which amount the Commission held to be the amount at which appellant had offered to sell its property to the City and County of San Francisco, whereas in truth said amount was never approved either by appellant's stockholder or the voters of San Francisco, did not constitute an "offer," and is not competent or any evidence of the fair value of appellant's property.

9. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order and the rate imposed thereby was based upon the valuation aforesaid without giving any consideration to reproduction cost, historical cost, prudent investment, capitalization, or any lawful or accepted method of arriving at the value of the property of a public utility for rate-making purposes, and without giving any consideration to whether said rate would yield a return sufficient to enable appellant to operate successfully, to maintain its financial integrity, [fol. 1438] to attract capital, and to compensate its investors for the risks assumed.

10. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the evidence establishes that the 6-cent fare imposed by said order will not afford appellant a fair return upon its property devoted to public use, but on the contrary will result in a reduction of appellant's gross operating revenue to a point where it will have no net income at all and will suffer a substantial deficit, and in that said fare, aside from the question of the value of appellant's property, will not enable appellant to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed.

11. The Supreme Court of the State of California erred in holding and deciding that said order was not invalid and did not deprive appellant of its property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said order is without support in the evidence, is contrary to the evidence, and will result in the confiscation of appellant's property.

12. The Supreme Court of the State of California erred in failing to accord to appellant a judicial review upon the court's independent judgment as to the facts with respect to each of the constitutional right herein asserted; instead, the court sustained the Commission on the ground that there was some evidence to support its order, without regard to the probative force of the evidence, and without independently considering the facts.

[fols. 1439-1447] PRAYER FOR REVERSAL

For which errors the appellant, Market Street Railway Company, prays that the said judgment of the Supreme Court of the State of California, in the above entitled cause, be reversed, and a judgment rendered in favor of the said appellant, and for costs.

Dated: September 20, 1944.

Cyril Appel, Felix T. Smith, Francis R. Kirkam,
Henry G. Hayes, Counsel for Appellant.

Pillsbury, Madison & Sutro, of Counsel.

[fols. 1448-1450] (Bond of appellant for costs on second appeal, approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas, filed September 21, 1944, omitted in printing.)

[fol. 1451] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 21, 1944

The appellant in the above entitled cause having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in said cause by the Supreme Court of the State of California, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is *Ordered* that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause as provided by law, and it is further *Ordered* that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record. [fol. 1452] proceedings and judgment in said cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within sixty days of this date.

And it is further *Ordered* that the stay of the decision and order of appellees, heretofore granted by order of the Supreme Court of the State of California in said cause on March 8, 1944, shall remain in full force and effect upon the terms fixed in said order throughout the pendency of the said appeal proceedings.

And it is further *Ordered* that security for costs on appeal be fixed in the sum of five hundred dollars (\$500), and that upon approval of bond in said amount this order shall operate as a supersedeas.

Dated: September 20, 1944.

Gibson, Chief Justice of the Supreme Court of the State of California.

[fols. 1453-1457] (Citation on second appeal, with acknowledgment of service endorsed thereon, filed September 21, 1944, omitted in printing.)

[fol. 1458] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENTAL PRAECIPE FOR TRANSCRIPT OF RECORD—
Filed Sept. 21, 1944

To the Clerk of the Supreme Court of the State of California:

You are hereby requested to prepare a transcript of the additional matters of record in this case and to transmit it to the Clerk of the Supreme Court of the United States, at Washington, D. C., duly certified and authenticated, and within the time prescribed by the Rules of the Supreme Court of the United States, consisting of the following documents and portions of the records in this cause, which, together with the documents and portions of the record specified in the original praecipe herein, constitute the record on appeal to the Supreme Court of the United States:

1. Petition for appeal, assignment of errors and prayer for reversal;

2. Statement as to jurisdiction;

[fol. 1459] 3. Order allowing appeal;

4. Bond for costs;

5. Citation;

6. Statement directing attention to paragraph 3 of Rule 12;

7. Stipulation regarding appellees' statement opposing jurisdiction and motion to dismiss or affirm and appellant's brief in opposition thereto;

8. This praecipe;

9. Certificate of the Supreme Court of the State of California.

Dated at San Francisco, California, this 20 day of September, 1944.

Cyril Appel, Felix T. Smith, Francis R. Kirkham,
Attorneys for Appellant.

Due service and receipt of a copy of the within praecipe is admitted this 20 day of September, 1944.

Everett C. McKeage, Roderick B. Cassidy, Wyman
C. Knapp, Frank B. Austin, John Gregory, Attor-
neys for Appellees.

[fol. 1460] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1461] SUPREME COURT OF THE UNITED STATES

October Term, 1944

Nos. 510 and 511

STATEMENT OF POINTS RELIED UPON AND STIPULATION COVERING PRINTING OF RECORD—Filed Oct. 4, 1944

Appellant adopts its assignment of errors as its statement of the points to be relied upon in this Court.

It is hereby stipulated by and between the parties to this cause that the whole of the record on appeal in said cause shall be printed, except the following portions thereof:

1. Praecipe, item 1: Exhibits A, B, C and D, attached to Petition of Appellant to the Supreme Court of the State of California for Writ of Review, being pages 24 to 100, inclusive, of the record docketed in this court, and Exhibit G, attached to Petition of Appellant to the Supreme Court of the State of California for Writ of Review, being pages 110 to 141, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Exhibits A, B, C, D and G, attached to the Petition [fol. 1462] of Appellant to the Supreme Court of the State of California for Writ of Review, being, respectively, Order of Railroad Commission instituting investigation; Decision No. 36739 of Railroad Commission, with concurring opinions

by Commissioners Sachse, Baker and Caemer; Petition of Market Street Railway Company for Rehearing; Order of Railroad Commission Extending Effective Date of Decision and granting oral argument on Petition for Rehearing; and Order of Railroad Commission of January 12, 1944, denying rehearing of Decision No. 36739, all omitted in printing, as they are duplicated elsewhere in this printed record."

2. Praeceptum, item 3: Supplemental Points and Authorities in Support of Reply of Petitioner to Answer of Railroad Commission to Petition for Writ of Review, being pages 189 to 194, inclusive, of the record docketed in this court, and Order Postponing Effective Date of Decision No. 36739, Exhibit H to Reply of Petitioner to Answer of Railroad Commission to Petition for Writ of Review, being pages 195 to 200, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Supplemental Points and Authorities in Support of Reply of Petitioner to Answer of Railroad Commission to Petition for Writ of Review, and Order Postponing Effective Date of Decision No. 36739, omitted in printing."

3. Praeceptum, item 9(a)2: Affidavit of service of order instituting investigation, filed April 22, 1943, being page 221 of the record docketed in this court. Insert the following note in lieu thereof:

"Affidavit of Service of Order instituting investigation, filed April 22, 1943, omitted in printing."

[fol. 1463] 4. Praeceptum, item 9(a) 8: Notice of Hearing of Oral Argument set for February 3, 1944, dated February 2, 1944, being page 281-1/2 of the record docketed in this court. Insert the following note in lieu thereof:

"Notice of Hearing of Oral Argument set for February 3, 1944, dated February 2, 1944, omitted in printing."

5. Praeceptum, item 9(a) 10: Petition for extension of effective date of Decision No. 36739, filed by Market Street Railway Company on February 1, 1944, being pages 309 and 310, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Petition for Extension of Effective Date of Decision No. 36739, filed by Market Street Railway Company on February 1, 1944, omitted in printing."

6. Praeceptum, item 9(a) 11: Railroad Commission Decision No. 36852, order postponing effective date of Decision No. 36739, being pages 311 to 314, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Railroad Commission Decision No. 36852, Order postponing effective date of Decision N. 36739, omitted in printing."

7. Praeceptum, item 9(a) 37: Photographs of advertisements and of a letter addressed to employees, used by Market Street Railway Company in attempting to secure additional employees, attached as exhibits to statement re Manpower and Employment, Market Street Railway Company, filed September 15, 1943, as Exhibit No. 26 in the Railroad Commission proceedings, being pages 551 to 563, inclusive, [fol. 1464] of the record docketed in this court. Insert the following note in lieu thereof:

"Photographs of advertisements, and of a letter addressed to employees, used by Market Street Railway Company in attempting to secure additional employees, attached as exhibits to statement re Manpower and Employment, Market Street Railway Company, filed September 15, 1943, as Exhibit No. 26 in the Railroad Commission proceedings, omitted in printing."

8. Praeceptum, item 9(a) 48: Volume 4. Transcript, Hearing at San Francisco, December 21, 1943, being pages 953 to 1072, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Transcript, Volume 4, Hearing at San Francisco, December 21, 1943, consisting of oral argument of counsel on petition for rehearing, omitted in printing."

9. Praeceptum, item 9(a) 49: Volume 5. Transcript, Hearing at San Francisco, December 22, 1943, being pages 1073 to 1160, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Transcript, Volume 5, Hearing at San Francisco, December 22, 1943, consisting of oral argument of counsel on petition for rehearing, omitted in printing."

10. Praeceptum, item 9(a) 50: Volume 6. Transcript, Hearing at San Francisco, February 3, 1944, being pages 1161

to 1200, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

“Transcript, Volume 6, Hearing at San Francisco, February 3, 1944, consisting of oral argument of counsel on petition for extension of effective date of Decision No. 36739, [fol. 1465] omitted in printing.”

11. Praecipe, item 17: Bond of appellant for costs, approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas, being pages 1403-1405, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

“Bond of appellant for costs, approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas, omitted in printing.”

12. Praecipe, item 18: Citation, being pages 1406-1407, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

“Citation, with acknowledgment of service endorsed thereon, filed July 31, 1944, omitted in printing.”

13. Praecipe, item 19: Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, being pages 1408-1409, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

“Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, with acknowledgment of service endorsed thereon, filed July 31, 1944, omitted in printing.”

14. Praecipe, item 23: Original documents separately certified and forwarded to the Clerk of the Supreme Court of the United States. Insert the following note in lieu thereof:

“Original documents separately certified and forwarded [fol. 1466] to the Clerk of the Supreme Court of the United States to be considered by this Court as original papers under Revised Rules of the Supreme Court of the United States, Rule 10, paragraph 4, omitted in printing.”

15. Supplemental praecipe, item 4: Bond of appellant for costs on second appeal, approved by the Chief Justice

of the Supreme Court of the State of California and to operate as a supersedeas, filed September 21, 1944, being pages 1448 to 1450, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Bond of appellant for costs on second appeal, approved by the Chief Justice of the Supreme Court of the State of California and to operate as a supersedeas, filed September 21, 1944, omitted in printing."

16. Supplemental praecipe, item 5: Citation on second appeal filed September 21, 1944, being pages 1453 and 1454, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Citation on second appeal, with acknowledgment of service endorsed thereon, filed September 21, 1944, omitted in printing."

17. Supplemental praecipe, item 6: Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, filed September 21, 1944, in the second appeal, being pages 1455 and 1456, inclusive, of the record docketed in this court. Insert the following note in lieu thereof:

"Statement directing attention to paragraph 3 of Rule [fol. 1467] 12 of the Revised Rules of the Supreme Court of the United States, with acknowledgment of service endorsed thereon, filed September 21, 1944 in the second appeal, omitted in printing."

Dated: San Francisco, the 29th day of September, 1944.

Cyril Appel, Felix T. Smith, Francis R. Kirkham,
Attorneys for Appellants.

Everett M. Page, Roderick B. Cassidy, Wyman C.
Knapp, Frank B. Austin, John Gregory, Attorneys
for Appellees.

[fol. 1467a] [File endorsement omitted.]

[fol. 1468] SUPREME COURT OF THE UNITED STATES

Nos. 510 & 511, October Term, 1944

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—November 13, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in these cases is postponed to the hearing on the merits.

Endorsed on Cover: File No. 48,963, 48,964. California, Supreme Court, Term No. 510. Market Street Railway Company, Appellant, vs. Railroad Commission of the State of California, Frank R. Havenner, C. C. Baker, et al., etc. Term No. 511. Market Street Railway Company, Appellant, vs. Railroad Commission of the State of California, Frank R. Havenner, C. C. Baker, et al., etc. Filed September 26, 1944. Term No. 510 O. T. 1944. 511 O. T. 1944.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

653307

Sup. Ct.

No. 510

MARKET STREET RAILWAY COMPANY,

Appellant,

vs.

**RAILROAD COMMISSION OF THE STATE OF CALI-
FORNIA, FRANCK R. HAVENNER, C. C. BAKER,
ET AL.**

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION

**CYRIL APPEL,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
HENRY G. HAYES,**

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 510

MARKET STREET RAILWAY COMPANY,

vs.

Appellant,

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND FRANCK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE AND FRANK W. CLARK, THE MEMBERS OF AND CONSTITUTING THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Appellees.

STATEMENT AS TO JURISDICTION

Statement of the Case

Appellant is a public utility street railway company operating in the City and County of San Francisco and the County of San Mateo. It is subject to the jurisdiction of the California Railroad Commission under the provisions of the Public Utilities Act of the State of California.¹ The instant case originated before the Railroad Commission by an order, made on the Commission's own motion, instituting

¹ California Statutes, 1915, p. 115, as amended; Deering's California General Laws, Act 6386.

an investigation "into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company."² Although this order, in the broad form conventionally used, referred generally to rates, the evidence at the hearings—which covered only three days, May 10, July 15, and September 15, 1943—was directed to matters relating to improvement of service.³ At no stage in the proceedings was there any issue formulated with respect to rates; at no stage was there any definite complaint or allegation that any rate was unreasonable. At no time prior to the decision did the Commission advise appellant that its rates were in issue, or under attack, or that any change in them was proposed. The testimony was general, relating except in incidental respects to service. Evidence customary in a rate case is entirely absent.

After the hearings the Commission filed an order directing appellant to reduce its fares from 7 cents to 6 cents. Appellant promptly filed a petition for rehearing,⁴ alleging specifically and in appropriate detail,⁵ that the Commission's order was invalid under the due process of law clause of the Fourteenth Amendment for the reason that it was entered without notice and opportunity for a hearing, that it was not supported by substantial evidence, and that it was confiscatory and constituted the taking of appellant's property. The Commission denied the petition for rehearing with opinion. In this opinion, which is attached hereto

² Exhibit A to Petition for Writ of Review.

³ See statements of the members of the Commission and of the Commission's engineer, Exhibit E to the Petition for Writ of Review.

⁴ Exhibit C to Petition for Writ of Review.

⁵ See paragraphs II, III and IV of the Petition for Rehearing, which is a part of the record herein as Exhibit C to appellant's Petition for Writ of Review.

as Exhibit 2, the Commission expressly passed upon the Federal questions and sustained the validity of its order as against the attack based on the Federal constitution.

Thereafter pursuant to sections 67, 68, and 69 of the Public Utilities Act of California, *supra*, appellant filed its petition for writ of review in the Supreme Court of the State of California, specifically repeating its attack upon the validity of the Commission's order under the due process of law clause of the Fourteenth Amendment. The court granted the petition and the cause was heard upon the return of the Commission to the writ of review. Thereafter, on July 1, 1944, the court affirmed the order of the Commission. The opinion of the court, which is attached hereto as Appendix 3, expressly passed upon the Federal questions and sustained the validity of the Commission's order as against appellant's claim that it is repugnant to the due process clause of the Fourteenth Amendment. Appellant's petition for a rehearing of the decision and judgment of the Supreme Court of the State of California was denied by that court without opinion on July 27, 1944.

Opinions Below

The opinion of the Railroad Commission, together with two concurring opinions, is attached hereto as Appendix 1. The opinion of the Railroad Commission on rehearing is attached hereto as Appendix 2. The opinion of the Supreme Court of the State of California is attached hereto as Appendix 3.

Statutory Provision Sustaining Jurisdiction

The statutory provision believed to sustain the jurisdiction of this Court is section 237(a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Act of January 31, 1928 (28 U. S. C., secs. 344(a), 861a).

Statute of the State Involved

The statute of the State, the validity of which is involved, is the order of the Railroad Commission in this proceeding. This order is copied in full at the end of the majority opinion of the Railroad Commission in Appendix 1 attached hereto.

Date of Judgment and of Application for Appeal

The opinion and judgment of the Supreme Court of the State of California was rendered July 1, 1944 (Appendix 3 hereto). A petition for rehearing was denied July 27, 1944. The application for appeal was presented July 31, 1944.

Cases Believed to Sustain Jurisdiction

The cases believed to sustain the jurisdiction of this Court are:

Bluefield Co. v. Pub. Serv. Comm., 262 U. S. 679, 683;
Nor. Pacific v. Dept. Public Works, 268 U. S. 39, 42;
King Mfg. Co. v. Augusta, 277 U. S. 100, 114;
Ohio Bell Tel. Co. v. Comm'n., 301 U. S. 292, 298-300;
American Bridge Co. v. Comm'n., 307 U. S. 486, 487.

Raising the Federal Questions

In paragraphs II, III, and IV of appellant's petition for a rehearing filed with the Railroad Commission,⁶ appellant attacked the validity of the Commission's order under the due process of law clause of the Fourteenth Amendment to the Federal constitution on the several grounds already stated. In its opinion on rehearing the Commission set forth these grounds of attack, pointing out that for the reasons stated therein "our order is alleged to be in violation . . . of the Fourteenth Amendment to the Constitution of the

⁶ See footnote 5, *supra*.

"United States"; and it sustained the validity of the order as against this attack.

In its petition for writ of review in the Supreme Court of the State of California, appellant specifically renewed its attack on the validity of the Commission's order under the Fourteenth Amendment. Paragraphs IX, X and XI of this petition read in part as follows:

"IX

In issuing said Decision No. 36739, the Railroad Commission has not regularly pursued its authority, and has denied petitioner due process of law contrary to the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States; in that the Railroad Commission has ordered petitioner to reduce its rates or fares (1) without first giving petitioner notice that it was being charged with the maintenance of rates that were unreasonable or in any other respect unlawful because in violation of the provisions of the Public Utilities Act, (2) without declaring or framing the issue of unreasonable rates during the course of the hearings had in said proceeding, and (3) without according petitioner a hearing upon such issue. In this regard petitioner alleges and shows as follows: [here follow detailed specifications].

X

In issuing said Decision No. 36739 the Railroad Commission has not regularly pursued its authority, and has denied petitioner due process of law in violation of its rights under the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, and has acted arbitrarily and capriciously, in that it has made an order reducing petitioner's rates without having substantial or any evidence before it that the rates now charged are in

any respect unreasonable or that a lower rate would be reasonable for the future. In this regard petitioner alleges and shows: [here follow detailed specification].

XI

In issuing said Decision No. 36,739 and the order therein contained the Railroad Commission has not regularly pursued its authority, has denied the petitioner due process of law, has taken its property and the use thereof without compensation, in violation of its rights under the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States, and has acted arbitrarily and capriciously in that the order requiring petitioner to reduce its fare from 7 cents to 6 cents per passenger is not supported by the evidence, is contrary to the evidence, and will result in a reduction of petitioner's gross operating revenue to the point where it will have no net income at all, but will suffer a substantial deficit. In this regard petitioner alleges and shows as follows: [here follow detailed specifications]."

These federal questions were expressly passed upon by the Supreme Court of the State of California and the order of the Commission sustained as against its claimed invalidity under the due process clause of the Fourteenth Amendment.⁸

Statement of the Grounds Upon Which It is Contended the Questions Involved are Substantial:

1. The decision and order of the Railroad Commission directing appellant to reduce its rates was issued without any complaint first made or other form of notice given specifically charging appellant with the maintenance of unreasonable rates, without otherwise framing the issue of unreasonable rates by directing evidence and argument

⁸ See Appendix 3 attached hereto.

to that issue, and without allowing appellant an opportunity to introduce evidence on this issue when it was first raised by the decision and order of the Commission.⁹ The order, therefore, is invalid and deprives appellant of its property without due process of law, contrary to the Fourteenth Amendment.

Morgan v. United States, 304 U. S. 1, 14-22;

Ohio Bell Telephone Co. v. P. U. Commission, 301 U. S. 292, 300-306;

West Ohio Gas Co. v. P. U. Commission, 294 U. S. 63, 67-71:

The investigation instituted by the Commission was general in its scope. It was not a complaint of the kind required by section 60 of the California Public Utilities Act¹⁰ setting forth something done or omitted to be done by petitioner. It was not followed by any more specific notice as to what the Commission proposed to do, notice either in the form of an order to show cause why certain action should not be taken or by the issuance of proposed findings and conclusions. Nor was the issue of unreasonable rates framed during the course of the hearings by the introduction of evidence directed concretely to that issue. On the contrary, the statements made by the Commissioners, and the evidence offered by Commission witnesses, indicated that the reasonableness of rates was not an issue.¹¹ It is not sufficient that the Commission's broad order of investigation merely mention the subject of rates along with other objects of inquiry. The issue of unreasonable rates must be more concretely framed than this (*Morgan v. U. S.*,

⁹ As was prayed in the petition for a rehearing filed with the Railroad Commission. See footnote 5, *supra*.

¹⁰ See footnote 1, *supra*.

¹¹ See excerpts from the transcript, Exhibits E and F to Petition for Writ of Review.

supra). As the Supreme Court said in that case: "Those who are brought into contests with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command."

2. The decision and order of the Railroad Commission directing appellant to reduce its rates was made without any or substantial evidence to support it, and is based upon assumed facts not in evidence. The order, therefore, is invalid and deprives appellant of its property without due process of law, contrary to the Fourteenth Amendment.

I. C. C. v. Union Pacific Railway Co., 222 U. S. 541, 547;

I. C. C. v. Louisville & Nashville Railway Co., 227 U. S. 88, 91;

Chicago Junction Case, 264 U. S. 258, 262-266;

U. S. v. Abilene & Southern Railway, 265 U. S. 274, 286-290;

West Ohio Gas Co. v. P. U. Commission, 294 U. S. 63, 69-70;

Ohio Bell Telephone Co. v. P. U. Commission, 301 U. S. 292, 302-304.

The proceeding before the Commission was not tried as a rate case. There was no competent evidence of the value of petitioner's property devoted to the public use, nor any evidence of what would constitute a fair return on that property, nor any evidence of the results which might be expected with the application of some fare below that being charged by petitioner.

Evidence is entirely absent concerning:

1. The amount of traffic moving under petitioner's present 7-cent fare in San Francisco.

2. The present revenue from that traffic.
3. The expense of handling that traffic.
4. The capital used in rendering this service.
5. An estimate of the traffic that would move if this rate were reduced as ordered.
6. An estimate of the revenue from that traffic.
7. An estimate of the expense of handling that traffic.

Items 1, 2, 3, and 4 are necessary to any determination that the existing 7-cent rate in San Francisco is unreasonable.

Items 5, 6 and 7 are necessary to any determination that the proposed new rate is reasonable.

Nevertheless, the Commission made assumptions without any basis in the evidence of results anticipated under various fare structures; and, likewise without any evidence thereon, it purported to measure the value or worth of the service being rendered and fix a rate on that basis. As was said in the *Ohio Bell Telephone Co.* case, *supra*, page 300, the Commission "without warning or hint of warning that the case would be considered or determined upon any other basis than the evidence submitted," proceeded to find reasonable and to fix a lower rate for the future without any evidence to support its action.

3. The decision and order of the Railroad Commission directing appellant to reduce its rates upon the erroneous theory that the rates presently charged are in excess of the value of the service being rendered is invalid and deprives appellant of its property without due process of law, contrary to the Fourteenth Amendment, in that,

(a) A utility is entitled to charge rates equal to the cost to it of rendering service, including a fair rate of return upon the fair value of the property used and useful in that service, and permitting the utility to maintain its financial integrity and to attract capital.

Prescribed rates yielding a lesser return are confiscatory.

Los Angeles Gas & Electric Co. v. Railroad Commission, 289 U. S. 287, 305;

Railroad Commission v. Pacific Gas & Electric Co., 302 U. S. 388, 394-395;

Denver Union Stock Yard Co. v. United States, 304 U. S. 470, 475;

Natural Gas Pipeline Co. v. Federal Power Commission, 315 U. S. 575, 585;

Federal Power Com. v. Hope Nat. Gas Co., 320 U. S. 591, 605.

(b) The value of the service theory, and the ability of consumers to pay for service, have been rejected as bases for the determination of reasonable rates.

Chicago Railways Co. v. Illinois Commerce Commission, 277 Fed. 970, 976-977;

Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735, 740-741;

Telluride Power Company v. P. U. Commission of Utah, 8 F. Supp. 341, 343;

Mississippi River Fuel Co. v. Federal Power Commission, 121 F. (2d) 159, 164;

Puget Sound Power & Light Co. v. Department of Public Works, 38 P. (2d) 350, 351-353, 179 Wash. 461;

Duluth State Railway v. Railroad Commission, 152 N. W. 887, 892-893, 161 Wis. 245;

Wisconsin-Minnesota Light & Power Co. v. P. U. Commission, 197 N. W. 359, 362, 183 Wis. 96;

Miller v. Railroad Commission, 9, Cal. (2d) 190, 201.

4. The decision and order of the Railroad Commission directing appellant to reduce its rates is confiscatory in that it will not permit a fair return upon the value of appellant's property devoted to the public use. As the Commission itself points out,¹² the only "indication" in the

¹² See footnote 19 in the Opinion of the Railroad Commission, Exhibit I hereto.

record of what might be the fair value of appellant's property is a resolution of appellant's board of directors, passed March 25, 1943, authorizing the sale of appellant's operative properties to the City and County of San Francisco for \$7,950,000. If, as both the Commission and the Court below assume, appellant had "offered" its property to the City at this figure, the offer would not support a finding of value for rate-making purposes.

"For the purpose of public regulation market value can have absolutely no application. . . . What the thing will sell for, of course, is largely determined in the market by its earning power. The earning power of a utility is determined by its rates."¹³

In fact, however, there was no "offer." The record shows that there were abortive negotiations, tentative on each side, never approved on the City's part by a vote of the people, or on appellant's part by a vote of its shareholders.¹⁴ Beyond this, the resolution itself gives no basis for assuming that the price named had any relation to the value of petitioner's property.¹⁵ It simply states that the price was considered "the best price obtainable" from the City under all the circumstances, which included acceptance at an election by the voters of the City.

But even if it be assumed that appellant's rate base is \$7,950,000, the order is still confiscatory. Obvious corrections of the Commission's own assumed figures of revenue

¹³ John M. Eschleman (draftsman of the California Public Utilities Act and first President of the California Railroad Commission), "Control of Public Utilities," 2 Cal. L. Rev. 104, 112.

¹⁴ City Exhibits Nos. 8, 9; petitioner's Exhibit G.

¹⁵ The book value of appellant's road and equipment on December 1, 1942, was \$41,768,505; capital invested at the end of 1942 was \$36,214,425.68; the last historical cost valuation of appellant's property by the Commission, made in 1920, showed historical cost, undepreciated, of \$29,715,147. See concurring opinion of Commissioner Sachse, Exhibit 1 attached hereto; Comm. Exhibit No. 2, sheet 2, notes 2 and 3.

and expense show that appellant will operate at a net loss under the 6-cent fare. There is, therefore, no justification for any reduction, regardless of the rate base assumed.

Conclusion

We respectfully submit that this Court has jurisdiction of the appeal.

Dated: July 31, 1944.

Respectfully submitted,

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,

Of Counsel.

EXHIBIT 1

*Before the
Railroad Commission of the State of California*

Decision No. 36,739

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service, and facilities of the Market Street Railway Company.

Case No. 4680

Cyril Appel, Ivores R. Danes, and Samuel Kahn, for the Market Street Railway Company.

Angelo J. Rossi, Mayor, John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul Beck, for the City of San Francisco.

Mrs. Helen Negrin, in *propria persona*:

By the Commission:

Opinion

In April of this year we came to the conclusion that the public interest demanded an inquiry into the local transportation situation in San Francisco, in so far as the matter is within our jurisdiction, and ordered an investigation into the rates, charges, classifications, rules, and regulations of Market Street Railway Company (hereinafter sometimes referred to as the company), and also into the reasonableness, sufficiency, and adequacy of its operations, service, and facilities.

Hearings before the Commission en banc were held in San Francisco on May 10, July 15, and September 15, 1943. Our staff made its studies and investigation in part prior to the

hearing of May 10, and in part during the course of the proceeding, and introduced the results in the form of 18 exhibits.¹⁶ The company put 14 exhibits in evidence,¹⁷ and the City of San Francisco one.¹⁸ Upon the completion of testimony on September 15, 1943, the case was taken under submission and is now ready for decision.

Background of Present Proceeding

The issues in this case can be better understood after a brief review of the company's history, particularly its recent history since 1937, and the previous rate decisions of this Commission.¹⁹

Public transportation in San Francisco goes back to 1852 when an omnibus service began to operate over a few of the city's streets. In 1860 the first street railway, the Market Street-Mission Dolores line, was opened for service. In 1873 the first cable line was put into operation and later expanded. This form of mass transportation met with such success that during the next ten years a number of horsecar lines were converted to cable lines. Electric street railway service came to San Francisco in 1891. The Market Street Railway Company was incorporated in October 1893 and took over 11 of the 17 street-car lines then independently operated in San Francisco. Additional properties were later acquired by that company.

The 1900 San Francisco city charter declared in favor of municipal ownership of public utilities and provided that franchises could be granted to privately-owned street railway companies for a period not to exceed 25 years, at the end of which time all tracks and overhead construction were to revert to the city at no cost.

United Railroads of San Francisco was incorporated in 1902, taking over the properties of its predecessor

¹⁶ Exhibits Nos. 1 to 6, incl.; 8 to 17, incl.; and No. 33.

¹⁷ Exhibits Nos. 19 to 32, incl.

¹⁸ Exhibit No. 7.

¹⁹ Decision No. 20889—40 CRC 525 (6-21-37)

Decision No. 30849—41 CRC 349 (5-9-38)

Decision No. 31472—41 CRC 651 (11-23-38)

Market Street Railway Company and five other lines, and bringing together under one control 229 miles of track, a large portion of which was cable operated. This system suffered heavily in the earthquake and fire of 1906, and a considerable reconstruction program was carried out between 1906 and 1910, with some replacement of damaged cable lines by overhead electric traction lines.

In December 1912, the City and County of San Francisco placed in operation a street railway line on Geary Street from Kearny Street to 33rd Avenue. It replaced the old Geary Street cable line. During the next few years the Municipal system, which is not under the Commission's jurisdiction, expanded rapidly through the construction of lines to serve Panama Pacific Exposition in 1915.

Because of its failure to pay interest on its outstanding 4% bonds, United Railroads of San Francisco properties were sold at a foreclosure sale. They were acquired by representatives of the bond holders who transferred them on or about April 1, 1921 to Market Street Railway Company, the company now before us. In 1925 the Standard Power and Light Corporation acquired about a 40% stock interest in and virtual control of Market Street Railway Company.

Prior to 1930 a number of the company's franchises expired. Certain lines were operated under sufferance by the city pending clarification of the franchise situation. In November, 1930, the voters of San Francisco adopted and subsequently the State Legislature ratified a charter amendment permitting the company to surrender its remaining franchises to the city and county in exchange for a 25-year operating permit. This permit apparently annulled the 1900 city charter provision requiring the reversion, without cost to the city, of property covered by 25-year franchises; the city, at any rate, did not enforce such charter provision. The 1930 permit provides that the city may acquire the company's properties at a fair price during the life of the permit.

Under ordinance of the City and County of San Francisco one-man streetcar operation was prohibited. In 1933 the company sought repeal of this ordinance. The

petition was denied by the city authorities but the company succeeded in 1934 in obtaining a temporary injunction against the enforcement of the ordinance. The city appealed and the one-man car issue was carried to the U. S. Supreme Court, with the result that the city's two-man car ordinance was upheld. The company had, prior to the final determination of the lawsuit, commenced one-man operation on a number of its lines and continued such operation in greater or less degree until February 1939.

The first bus or motor coach line was operated in 1925 and at the end of 1938 the company had 11 motor coaches in operation. From 1939 forward some further change-over from electric and cable car operation to motor coach service took place and 125 coaches were in service on December 31, 1942. Two cable lines remain in operation on the company's system at the present time.

The expansion of the Municipal Railway system since 1912 became an increasingly serious competitive factor in the operations and finances of the company. Agitation for acquisition of the company's system by the city commenced in 1912 and has continued more or less actively to the present time. The question of purchase through the medium of tax lien bonds, or railway revenue bonds, has been submitted to the voters on a number of occasions and been rejected every time. The most recent elections were held in November 1942 and in April 1943.

Most of the company's original franchises contained a five-cent fare clause. The five-cent fare, with transfer privileges, continued uninterruptedly on both the company's and the Municipal lines until July 6, 1937. On that date the first fare increase, granted by this Commission, became effective on the company's system, but the five-cent fare remained unchanged on the city-owned lines.

In 1937 the company applied to the Commission for a rate increase to a seven-cent cash fare. In decision No. 29,889 this application was denied but a two-cent transfer charge and an increase from 20 to 25 cents for a Sunday and holiday pass was granted. In March 1938 the com-

pany again petitioned for an increase to a seven-cent cash fare, with reduced rates to school children. In supplemental decision No. 30,849 the Commission authorized a seven-cent cash fare, with four tokens for 25 cents on other than interurban cars, 16 rides for 50 cents to school children, and an increased fare on interurban lines. A few months later, in a second supplemental application, the company again petitioned for a straight seven-cent fare and asked for authority to discontinue the token rate. In decision No. 31,472 of November 23, 1938, the Commission directed the company to petition the city for authority to abandon operation of certain lines and for relief from "Jitney" competition. The decision authorized the rate increases sought by the company in the event that such authority and relief were not granted by the city on or prior to January 1, 1939. The seven-cent fare became effective on that date and has remained in effect to the present time.²⁰

The operating and financial results of this fare change will be referred to later in some detail. Here it is sufficient to say that both traffic and revenue continued to decline and in 1941 reached their lowest point in twenty years.²¹ The operating income, after operating expenses,

²⁰ The fares at present in effect are as follows:

7-cent cash fare in San Francisco, other than on interurban cars, with free transfer;

School children 16 rides for 50 cents, with free transfer;

Sunday and holiday pass, for use in San Francisco, 25 cents;

South San Francisco line, 7 cents;

San Mateo line, 7 cents, fare to be in accordance with the tariff filed with the Railroad Commission on May 23, 1938.

²¹ Comparing 1941 with 1936, the last full year under the five-cent fare:

Year	Revenue	Index	Passenger	Index
	Passengers		Revenue	
1936	153,911,000	100%	\$7,437,039	100%
1941	89,855,000	58	6,010,757	81
Loss	64,056,000	42	1,426,282	19

depreciation, and taxes, dropped from \$783,486 in 1936 to \$210,345 in 1941, a decline of 73 per cent. In 1942 and 1943 the consequences of the war, together with other causes, brought about an abnormal increase in traffic, increased revenues and expenses; a further marked deterioration in the service to the public, and other difficulties, all before us in this proceeding.

Service

The principal issue at this time is the adequacy of the service the company is furnishing the public and the character and quality of such service in relation to the rates the public must pay. Operating revenues, operating expenses, operating income (net operating revenue), property value and rate base and rate of return also have their place in this case, but the significance of these items is *lost unless past, present and prospective operating and service conditions are kept in mind.*

The record shows that service has progressively deteriorated for a number of years, notwithstanding the total 40 per cent rate increase in 1937 and 1938, and is rapidly growing worse under war conditions. We recognize that some of the causes of the present unsatisfactory service are beyond the company's control and cannot justly be charged against this utility's management. All transportation agencies and other utilities, and indeed the entire economy of the country, are laboring under the stress and impact and the difficulties of the world war. Full allowance will be made for this fact in all wartime proceedings before the Commission.

After making such allowance the important question remains to what extent the ratepayer, under war conditions, should be compelled to pay the same or higher rates for an inadequate and inferior product or service while the utility enjoys abnormal profits.

In this case there is evidence, moreover, of long-time neglect, of mismanagement, of indifference to urgent public need, and of other matters inevitably productive of poor service that by no means were caused by or can be charged to the war, and for the consequences of such failure

the company must assume responsibility. The record is voluminous on these points and reference can be made only to the more important and outstanding causes of the unsatisfactory and insufficient service.

Accepted and acknowledged standards exist for measuring the quality and adequacy of mass transportation service in large cities. Mr. Kahn, the company's president, testified that his company does not use or apply any such standards in San Francisco, and the city authorities, under their police power, have not enforced such standards. Mr. Hunter, the Commission's chief engineer, testified that "for normal times" the service is unreasonably bad.²²

Aside from general standards, based on vehicle seating capacity and percentage of passengers who cannot be seated, a more specific and direct test of the quality of service can be had through an analysis of the company's operating schedules, performance records, track and equipment maintenance condition, manpower and employment situation, status of operating supervision, condition of street cars and buses, and the company's depreciation and renewal practices. Comparison can then be had of the company's present showing and its showing in prior years, and of this company's record in these respects with the record of its competitor, the Municipal Railway, which charges a five-cent fare. The company's seven-cent fare, it will be noted, is 40 per cent higher than that of the Municipal railway.

²² "COMMISSIONER CLARK: May I ask, to your knowledge, has the Railroad Commission, through its staff, made any check to determine to what extent the standard that you refer to is being complied with or violated? A. In Los Angeles or here?

Q. Here in San Francisco? A. Well, first the rule is not in effect here, but our studies show that it is not being complied with by quite a wide margin now.

Q. Have you any facts or figures to indicate whether or not, conditions as they are now being experienced by those who are dependent upon street cars are entirely unreasonable in that respect? A. Normal times, I would say 'yes' they are unreasonable in normal times. But, of course, war times you have to put up with things that you just cannot better. But for normal times I would say that this service is unreasonably bad."

Mr. Kahn testified that during normal times the number of *car hours operated* should and would fluctuate in an approximately direct proportion to the number of passengers hauled.²³ Exhibit 22, introduced by Mr. Kahn, is based on that assumption. The record developed, however, that the bases used in Exhibit 22 was "entirely theoretical" and in no sense reflected the company's actual operating practice either in "normal" or in "abnormal" times.

²³ "COMMISSIONER CLARK: Is it your contention as a transportation engineer that during normal times, during the period which this prophecy was made, this projection was made, that if you had 19½ per cent increase in passengers that wanted to ride that you mean that your average car hours would be 19½ per cent increase also? A. I should think that would generally be—at least it may not follow precisely, but the trend would be that way.

Q. If your opinion was asked as a traffic engineer, traffic engineer counseling with the company, would it be your statement in your best judgment if you had a 19½ per cent increase in traffic, whatever the cause might be, that they should make provision for 19½ per cent increase in car hours? A. Yes, I can only repeat if the trend was developed, why, the company would have to provide for more service. Now, as to whether 19 per cent increase in car hours would precisely equal the 19 per cent in increased traffic I am not prepared to say that would be the exact percentage, but it would approximate that percentage.

Q. In your engineering recommendation, based on experience, can you tell me a single instance in your years of experience or observation that such a condition has resulted? A. Well, I think it results in practically every street car company as the patronage is increased is obliged to add to its service.

Q. That is a general statement, that is not an answer to my question. The question really gets down to engineering, if you have a 19½ per cent increase do you think it is reasonable to assume that you would have to have a 19½ per cent increase in car hours to handle that induced traffic? You would—don't you agree that you would have an improved load factor likely resulting from that increase? A. Improved load factor?

Q. If along a given right of way you had a 19 per cent improvement in travel conditions, that is, as far as those who wanted to ride, or an increase of 19½ per cent in load, don't you believe you would have an improved load factor on that particular phase of the transit system? A. In normal times?

Q. In any time? A. In normal times I think the increase would be spread over the day following the same pattern as the normal pattern; in abnormal times I do not think any of those rules hold."

With reference to *operating schedules*, Mr. Hunter testified:

"Based upon the foregoing premises our study supports the conclusion that the service on the Market Street Railway should be improved. This conclusion is based upon the record in that the available street cars and buses are, in many instances and particularly during times of peak travel, overcrowded and the service is irregular. The overcrowded condition is accentuated by the equipment not being operated on schedule.

"Our traffic check, as presented by Mr. Hall, shows the cars and buses often operate with an irregular spacing. In other words, there will be long intervals between cars and buses followed by grouping of units. In some cases it may be noted that units are actually operated ahead of schedule."

And further:

"Table No. 1 of Exhibit No. 11 shows that during the year ending April 30, 1943, the percentage of motor coaches and street cars which failed to operate in accordance with the schedule requirements steadily from 0 to 5.7 per cent. In comparing this record with that of the Los Angeles Railway and Municipal system we find the Municipal operation meets its schedule with few exceptions while the Los Angeles Railway's failures increased from 0.8 per cent to 4.5 per cent. The better record of the Municipal system as compared to that of the Market Street Railway may be explained in part, at least, by the fact that the rate of pay is slightly higher and other attractive labor benefits as shown on Table VII of Exhibit No. 11."

Mr. Hall, transportation engineer of the Commission, testified that in March 1943 an average of 16 cars were out of service daily and 69 trips were lost per day. Car and coach schedules not performed increased from 0.2 per cent in September 1942 to 10.3 per cent in June 1943, while for the Municipal Railway during the same period

such non-performance never amounted to more than 0.1 per cent. The unfilled schedules on Los Angeles Railway, in comparison, amounted to 4.5 per cent in April 1943.

With reference to *operating performance* as reflected in traffic and loading records, the Commission's Transportation Department made traffic checks on April 29 and 30, 1943 (Exh. 6), and found that on the latter two days at the points checked, on inbound morning trips 17,516 seats were available for 25,675 passengers, while on the outbound afternoon trips 20,119 seats were available for 31,399 passengers. These figures represent load factors of 1.5 and 1.6, respectively, and show that for each one hundred seated passengers 50 passengers had standing room only during the morning inbound traffic check period, while 60 had standing room only during the evening outbound period.²⁴ Exhibit 6 also shows that on December 9 and 10, 1942, when similar checks were made, substantially the same overload conditions existed. This overloading is aggravated by the fact that many of the company's cars operate ahead of schedule, while in many cases groups of cars travel together, followed by rather long intervals of no cars.

One serious cause of unsatisfactory service for which the company is directly responsible is lack of proper supervision and inspection. Mr. Hunter, in Exhibit 47, recommends:

"Market Street Railway should provide better service by improved field supervision, so that when cars or buses get off schedule and operate in close proximity with the resulting long intervals between units, some of them should be turned back even at the expense of discommoding some passengers in the interest of better overall service on the system."

The same exhibit shows that the salaries of this company's inspectors are low in comparison with those of Municipal Railway, Key System, and Los Angeles Rail-

²⁴ Morning inbound check period 6:40 to 8:59 a. m.
Evening outbound check period 4:00 to 6:39 p. m.

way.²⁵ The company is now making efforts to improve this condition.

For a long period of time the company has had a large number of cars (at present approximately 70) available for operation and badly needed to furnish better service, standing idle in storage and out of operation, because of alleged manpower shortage. This does not include the cars held out of scheduled operations for lack of operators. Mr. Hall testified that if this idle equipment were put to use it would materially improve the service on heavily loaded lines during peak periods.

The record is voluminous with reference to the deplorable condition of track, of deferred maintenance, unfulfilled street paving obligations, obsolescence of streetcar equipment, and the failure of the company to replace, during prewar years, uneconomical and outdated facilities by modern, more efficient, and more profitable means of mass transportation.

Preliminary inspection of the company's tracks, Mr. Hall testified, showed much deferred maintenance over the entire system and that while under moderate speeds operation is reasonably safe, it is imperative that the deferred maintenance be caught up with at the earliest possible date. The poor condition of track has not developed during the war period, when valid excuses because of manpower and material shortage can be made, but represents a condition that has progressively grown worse over a long period of years. This is clearly indicated by the fact that during the last 15 years, from 1928 to 1942, there has been a marked and almost continuous reduction in the annual operating expenditures for way and structures, including track and paving and distribution system, and notwithstanding the further fact that the operative property represented by the company's way and structures account is substantially the same in

²⁵ Field inspectors rate of pay (per month)—Los Angeles Railway, 8 to 9 hours per day, \$215, plus 1½ for overtime over 9 hours; Key System, 8-hour day, \$210 to \$225; Municipal Railway, 8-hour day, \$200 to \$240; Market Street Railway, 8-hour day, \$180.

amount in 1942 as it was in 1928.²⁶ The footnote below indicates that in 1941 and 1942 only 37 per cent was spent each year for way and structures maintenance, compared with the amount represented by 100 per cent in 1928, and that while in 1928 this expenditure represented 8.47 per cent of the total operating cost, in 1942 only 4.36 per cent of total operating costs was represented by such maintenance. The footnote also shows that even in the prewar year of 1940 these maintenance expenditures were only half of the 1928 amount and represented only 6.5 per cent of total operating expenses.

Mr. Kahn was asked whether he was making, or was contemplating, any financial provision for deferred maintenance. His answer was:

"We have no definite program of setting aside anything for maintenance. We think our first obligation is to discharge our debts, it was money honestly borrowed and we want to honestly repay it. Having

²⁶ Table 4-2 of Exhibit 10 shows the company's operating expenses, Group I—Way and Structures, accounts 501 to 529, incl., for the period 1928 to 1942, both inclusive, as follows:

Year	Amount	Index (1928= 100)	Cost per Car-Mile *	Cost per Car-Hour *	Cost per Mile of Track	Per Cent of Total Operating Expense
1928	\$656,462.25	100%	2.48¢	22.3¢	\$2.315	8.47%
1929	574,991.78	88	2.21	20.2	2.043	7.70
1930	548,853.89	84	2.16	19.8	1.964	7.53
1931	476,423.26	73	1.96	18.2	1.704	6.94
1932	483,094.12	74	2.04	19.4	1.695	7.39
1933	474,124.23	72	2.08	20.1	1.664	7.98
1934	473,671.33	72	2.16	20.9	1.657	7.97
1935	424,710.27	65	1.94	20.0	1.554	7.20
1936	482,469.19	73	2.37	22.3	1.793	8.15
1937	451,172.76	69	2.31	21.4	1.695	7.55
1938	430,533.07	66	2.41	22.4	1.621	7.71
1939	349,941.90	53	2.17	20.5	1.376	6.64
1940	329,329.54*	50	2.38	22.5	1.307	6.50
1941	245,657.54*	37	2.05	19.2	1.051	4.98
1942	243,099.18*	37	2.06	18.9	1.107	4.36

* Includes minor amounts for motor coach operations in Account 24-1, Car-houses, as follows:

1940	\$1,759
1941	2,832
1942	1,332

* Rail and trolley coach.

gotten our debts out of the way we feel that we will then be in shape to refinance when the war is over or perhaps sooner so that we can improve our service generally, and when I say 'improve,' I mean improve in the broadest sense. That covers both modernization and improvement of present facilities."

We cannot agree with this concept of the obligations of the company, as expressed by its president, toward its patrons. We appreciate that a utility must pay its indebtedness if the stockholders desire to remain in control of the properties. The stockholders and not the ratepayer authorized the creation of the indebtedness and he is primarily responsible for its payment. Money allowed in rate proceedings for operating expenses should not be devoted to the payment of indebtedness. The company cannot expect, and this Commission has never held, that the ratepayers, in addition to paying for the cost of service, must provide the money to pay indebtedness. In our opinion, the first obligation of the company is to use its income to pay the cost of a reasonable, adequate and satisfactory service to the public. Necessary and legitimate operating costs have priority over all other expenditures. If the stockholders are unable, or, because of past losses, unwilling to advance funds to the company to pay its indebtedness, they should turn the properties over to the company's creditors. An analysis of the company's finances shows that over a period of years the company has used funds urgently required for proper maintenance, and for the replacement of depreciated property, for the payment of indebtedness.

The City of San Francisco, through Mr. Vensano, Director of the Department of Public Works, introduced Exhibit 7²⁷ containing a study and analyses of the obligations of the company in so far as they relate to the physical conditions of the streets occupied by the Market

²⁷ Exhibit 7 is entitled "Report of the Obligations as to the Use of Streets and Condition of Streets Used by the Market Street Railway Company (In Accordance with Ordinance 1892 (Series of 1939) Passed by the Board of Supervisors and Approved December 15, 1942)," dated June 30, 1943.

Street Railway. This exhibit indicates that the company's total obligations for bringing *street paving* into proper condition, as required by franchise obligations, amount to \$1,691,162.76. Mr. Vensano testified that this amount does not include any track reconstruction, except the minimum cost of raising the rail to a uniform grade line where that is necessary and, further, that this deferred paving maintenance has accumulated over many years.

The company's *streetcar rolling stock* is obsolete and 73 electric cars and 12 cable cars were out of service on May 1, 1943. Of the total number of 440 streetcars and 39 cable cars classed as operative by the company on May 1, 1943, the latest purchases were made in 1935 and 1936. In those years several second-hand one-man cars were acquired, which are now classed as "out of service." The balance of the operative streetcar equipment was built in the period from 1903 to 1933.²⁸ The 39 operative cable cars (12 of which are shown as "out of service") appear to have been built, or rebuilt, according to Exhibit 3, in the period from 1893 to 1907. A total number of 123 motor coaches were in service on May 1, 1943, all except one of which were purchased in the period from 1937 to 1942. (49 of these coaches are 1941 and 1942 models). It will be noted that more than two-thirds of the electric streetcars in service are 20 or more years old and that no streetcars have been purchased by the

²⁸ Exhibit 3 shows the age of streetcars as follows:

Number of Electric Streetcars	Built in	Remarks
18	1903	Rebuilt in 1922
9	1907	
144	1911	Two of these "out of service"
20	1913	
2	1918	Bought second-hand in 1935; now classed as "out of service"
148	1923-1930	59 shown as "out of service"
20	1924-1925	
10	1927	Bought second-hand in 1936; all 10 shown as "out of service"
69	1931-1933	

The company also operates 9 electric trolley coaches purchased in 1935 and 1936.

company since 1936. In that period great progress has been made in modernizing and increasing the operating efficiency of electric streetcars. The company has not participated in this progress.

Mr. Hall testified that there is considerable deferred maintenance on streetcars now in active service.

Referring to the *idle equipment* owned by the company and which, because of the alleged manpower shortage, cannot be put into service on the company's lines, it developed that the Municipal Railway through the city's Public Utilities Commission, has offered to lease from the company as many cars as can be spared, such cars to be operated on the Municipal lines.²⁹ The company has declined to make any such lease. Mr. Cahill, manager of the Public Utilities of San Francisco, testified that the city has been refused priorities for the purchase of motor coaches time after time, by the Office of Defense Transportation in Washington, D. C., for the reason "that we are not utilizing here in San Francisco all the rolling stock which exists; that is true as to streetcars only." The Municipal Railway, Mr. Cahill testified, does not store and has not available any idle streetcar equipment.

No satisfactory reason has been given the Commission why the large number of idle streetcars owned and classed as operative by the company is not put to much needed use during this critical war period. The excuse of manpower shortage is not convincing. If the Market Street Railway cannot use these cars, the Municipal Railway apparently can and has declared its willingness to pay a fair rental. Such rental payment would increase the company's net revenue and, what is more important, would provide urgently needed additional transportation for the people of San Francisco. We are compelled to

²⁹ From letter of Public Utilities Commission of San Francisco to Office of Defense Transportation, San Francisco: "The Public Utilities Commission of San Francisco also desires to lease on a rental basis as many of the Market Street Railway Cars as that Railway can spare, these cars to be used anywhere on the Municipal Railway that the Public Utilities Commission thinks fit."

conclude that the primary, if not the only, reason why no use is being made of this equipment is found in the competitive situation and because some traffic might be diverted from the Market Street lines to the Municipal lines, although there is nothing in the record indicating that such diversion would occur.

Manpower Shortage

The matter of manpower shortage occupies an important place in this proceeding. Mr. Kahn said: "Generally speaking, our difficulty at this time is not one of equipment, it is one of manpower . . ." We are aware that manpower shortage is now a nation-wide difficulty, aggravated on the Pacific Coast, and not confined to this company or to transportation companies and other utilities. We note, however, a marked difference in the manpower situation as between different operators and utilities and in its effect on the essential public service rendered by such different operators. These differences compel the conclusion that company and management policies affecting employee relations, wages and salaries, working conditions and attitude toward the public in general have a large effect on manpower shortage. The more enlightened and liberal such policies have been in the past, and the more sincerely they are continued in actual performance during this period of crisis, the more readily the manpower problem can be dealt with, to the advantage of the war effort, the public service, and the utility.

Careful studies into this subject were made by our staff and by the company and exhibits 10, 11, 17 and 26 deal wholly or partly with this matter. This evidence may be summarized. In April 1943 the platform men shortage, measured against the force required for scheduled services, was 18 per cent on the company's operations; on the Municipal Railway the shortage was 9 per cent; on the Los Angeles Railway 13 per cent. By June of this year Market Street's shortage had increased to 22 per cent, while Municipal's had dropped to 6 per cent. The company sustained a net loss (reflecting all labor turnover) of 13 platform employees in the 14 months

ending June 1943, while Municipal gained 143 such employees. It is obvious that those figures, by themselves, account for a large part of the difference between the relatively poor service of Market Street Railway and the relatively good service of the Municipal system.

The record indicates the reasons for the much more severe manpower situation on the company's lines compared with Municipal's. The causes are found partly in the somewhat higher wages paid Municipal employees, the fact that they have a large measure of employment security through Civil Service, they receive sick benefits, the working conditions are generally better than on the company's operations, and the equipment and plant they operate are better and safer.

Mr. Newton, the company's vice president, testified that the company's working conditions are in some respects more favorable than Municipal's. Company employees work under Union agreement, have the "check off," received pay for waiting time, and enjoy low-cost medical protection. These advantages are not sufficient, apparently, to overcome the company's pronounced manpower shortage. To our inquiry as to what is being done and what might be done to mitigate the men and women shortage, the company, among other things, urged the suspension of the San Francisco one-man car ordinance for the duration, with the proviso that proper care would be exercised in selecting the lines suitable for one-man operation. Mr. Kahn testified that such suspension would relieve the company's platform labor shortage to a great extent. In view of the determination of this issue by the City's electorate and by the courts we see no prospect of relief through this means in the direction of better transportation service for the City of San Francisco.

No complaint can be made in regard to the company's service to establishments directly serving the war effort, such as shipyards and other war industries, and to Army and Navy concentration points. A letter of commendation from the Office of Defense Transportation is in evidence. Lieut. Commander Jenkins, U. S. N. R., Domestic Transportation Office, 12th Naval District (former trans-

portation research engineer of this Commission), testified that the company's service to Naval establishments has been satisfactory and that there has been co-operation with Navy headquarters. He stated that the Navy's transportation service requirements will greatly increase in the near future.

We wish to put on record our conviction that all service requirements in furtherance of the war effort must have primary consideration of this company, as of all other utilities under our jurisdiction. Within the limits of our authority we are making, and shall continue to make, every effort to co-operate with the Army and Navy and with the appropriate federal agencies towards that end.

As to the character and condition of the present service generally Mr. Hunter, chief engineer of the Transportation Department, testified as follows:

"I next refer to the matter of the value of the service. Although this study and investigation does not analyze the rate situation I do not think we can entirely close our eyes to the value of the service. Obviously, they should be in balance as near as can be at all times and with the service getting worse, I will say on the Market Street, or at a low stage there is no question but what the passengers are getting less for their money today than they were when they got better transportation. But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service. If you desire to go from the station to your office up town, 3rd and Townsend, say, the public is willing to stand, but they would like an opportunity to get any kind of service. But, nevertheless, they are getting less for their money, much less than in normal times, and I think we have to think of that." ³⁰

³⁰ "Commissioner Sachse: On the question of service, Mr. Hunter, in your opinion, is the service now rendered by Market Street Railway in San Francisco worse or of approximately the same quality and character of service as it was during the 5-cent fare era prior to the war emergency?"

"A. I think the service is worse now."

The inseparable *relationship between rates and service* and the interdependence of the character and quality of utility service on the one hand and the level of the rates on the other hand have long been recognized by regulating commissions and by the courts. This Commission in Decision No. 2483 (1915), *W. J. Rogers, et al. v. Sacramento Valley West Side Canal Company, et al.* (7 CRC 145), said:

"Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. *The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public.* (Emphasis supplied.)

"In *Corington & L. Turnpike Road Co. v. Sanford*, 164 U. S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates

"Q. In your opinion should the cost of the service that the public is to pay, must pay, have some relation to the quality of service that is rendered, in so far as the public is helpless, beyond its control to get better service for the same amount of money that they pay? A. Yes, that is covered in my recommendation No. 6.

"Q. Will you enlarge a little bit on that? That No. 6, reads as follows: 'The value of the service should be in keeping with the rates.'

"And I would like to have you keep in mind my thought on that so that you can give your answer with that in mind. Assuming that it is beyond the control of the Company to give as good service as it did some time ago do you think that, even under those circumstances, the public should pay the same or more than they formerly paid for a superior quality of goods of service, other things being equal?

"A. I think the service should go along with the rate.

"Commissioner Havenner: Do you mean by that when the standard of service decreases rates should be commensurately decreased, if that can be calculated? A. Of course, the service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one. But, obviously, as the service declines that should be recognized in establishing any rate, but to determine just what a rate should be on a particular service, you could not do it without considering all the other elements that go in. There are many."

to be charged by the Covington & Lexington Turnpike Road, as established by the General Assembly of Kentucky. At page 596, Justice Harlan says:

'The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.'

"Again, on the same page:

'If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public.'

"In the leading case of *Smythe v. Ames*, 169 U. S. 464, the same learned justice, at page 574, says:

'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.'

"These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay."

In the case referred to the water company sought rehearing, contending that rates should be established which would yield operating and maintenance expenses, depreciation allowance, and a full return on fair value. In denying rehearing the Commission stated in part as follows (8 CRC 279):

'While it is true that a rate fixing authority must consider all the matter to which petitioners refer, peti-

tioners overlook another principle which is equally well established, namely, that the public is entitled to demand that no more be exacted from it for a public service than the service rendered is reasonably worth. In other words, a rate fixing authority can not look solely to the position of the utility. It must look also to the position of the present and prospective consumers of the utility. See *Covington and L. Turnpike Road Co. v. Sanford*, 164 U. S. 578, and *Smythe v. Ames*, 169 U. S. 464, 547."

In *Lake Hemet Water Co.* (11 CRC 617, 638), this Commission says:

"Petitioner's refusal to claim rates high enough to yield a return on the estimated reproduction cost new of its property or any return on so-called intangible items over and above the value of physical property is based on a frank recognition of the well-established rule in public utility regulation that while rates must be reasonable to the utility they must, in any event, be reasonable to the public. The cases clearly establish the principle that the rates charged by a public utility must in no event be higher than the service is reasonably worth to the consumer." Citing *Covington & L. Turnpike Road Co. v. Sanford*, 164 U. S. 578, 596; *Smythe v. Ames*, 169 U. S. 464, 547; *San Diego L. & T. Co. v. Jasper*, 189 U. S. 439, 446; *Wiltcox v. Consolidated Gas Co.*, 212 U. S. 19, 52; *Minnesota Rate Case*, 230 U. S. 352, 454.

The *Hemet* decision then continues as follows:

"The rates established may not be unjust from the point of view of the consumer. When it has been determined that rates beyond a certain amount would be unfair to the consumer, the value of the property for rate making can not be greater than the value which, at rates of interest sufficient to bring capital

into the business, will yield the revenue resulting from the rates established. This value may be very far indeed from the estimated cost of reproducing the property new. *Sacramento Valley Realty Company v. Sacramento Valley West Side Canal Company* (7 CRC 113)."

In Decision No. 12,761, *Coast Valleys G. & E. Co.* (24 CRC 53), this Commission said:

"The question of whether given rates are or are not reasonable depends as much upon the character of service supplied as upon the price which the consumer must pay for it. When service supplied by a utility is all that it should be, the conditions under which that service is extended to the community are liberal and the rates charged are found to produce more than a reasonable income, those rates should clearly be reduced.

"On the other hand if the service to the community in the broad sense is capable of distinct improvement, it would seem more desirable to reduce any excessive net revenue by increasing the quality of service rather than by decreasing the price paid for it."

The *Coast Valleys* decision then states as follows:

"In the present case, the company appears to be making every effort to give good service that is consistent with its financial ability. We believe, however, that the service is capable of improvement and should be extended to new consumers and to unserved portions of the territory covered under a much more liberal policy than that now followed. The schedule of rates embodied in the order accompanying this opinion will, therefore, not result in the extreme reduction which might be justified, but the company will be expected to continue the improvement of its system and to initiate a more liberal policy in the construction of line extensions."

All standard reference books on public utilities and commission regulation make note of the necessary relation between service and rates.³¹

The legal basis for the rule that fair and reasonable rates and fair and reasonable service must go hand in hand, and that conditions affecting one must affect the other, is well stated in the book referred to in the footnote below.³²

³¹ From *Public Utility Economics* by Thompson and Smith, New York (1941), page 257:

"A review of the common law duties of public service companies discloses that historically the significant problems were two—rates and service, with the major emphasis on service. The years of regulatory effort in the United States have reversed this emphasis, at least from a publicity viewpoint. Today a phase of the rate problem—valuation—stands out in the public eye as the number one problem of regulation. This reversal is to be accounted for by the unsettled state of the valuation question. The public hears much about the 'break-down of commission regulation' because of the impasse on that problem. One hears but little, however, about that other original primary problem—adequate service—because there is nothing spectacular, nothing controversial, about it. The utilities, on the whole, have had quite far-sighted leadership, insisting on service standards at least as high as those imposed by the commissions. Controversial or prosaic, service requirements are as important as rates; in fact, the reasonableness of rates should never be considered apart from the adequacy of the service in question."

³² From *Elements of Utility Rate Determination* by Bryant and Herriman, New York (1940), page 219:

"What is a proper rate of return in one case, in one locality, or at one period of time, may not be the proper amount at some future date (*Waukesha Gas & E. Co. v. Wisconsin R. Comm.*, 181 Wis. 281, 194 N. W. 846, P. U. R. 1923E, 634; see also 203 Fed. 864) or in some other place. What the public requires is a solvent utility (*Quinn v. Harrisburg R. Co.*, Pa., P. U. R. 1920C, 106) operating in an efficient manner (*Re Lexington Water Co.*, Va., P. U. R. 1928E, 323), provided that the rates are not more than the service is reasonably worth. The law does not guarantee a profit from the undertaking at all times nor in all localities. (*Kings County L. Co. v. Lewis*, 110 Misc. 204, 180 N. Y. Supp. 570, P. U. R. 1920D, 145; *Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 75 L. Ed. 265, 51 Sup. Ct. 65, P. U. R. 1931A, 1.) Competition from other forms of service may reduce the income of a utility and make future operation at a profit impossible. The full return on the fair value of the property is predicated on efficient operation. (*Re Lexington Water Co.*, Va., P. U. R. 1928E, 323.)"

Summarizing the record in the matter of service, we conclude that measured by normal standards the company's service to the public was unsatisfactory and inadequate before the war and is at this time unreasonably bad. Making full allowance for wartime difficulties, the record shows, and we so find, that the company's service could have been, and can now be, materially improved and that the company has not taken proper advantage of available means for betterment. In comparison with Municipal's performance, the company's service is distinctly inferior. All indications point to increased mass transportation service requirements, military and public, in San Francisco, with no relief in sight through the company's facilities, operating program, or management.

Traffic, Revenues, Expenses, and Effect of Fare Changes

For a period of seventeen years, until the beginning of the war boom in 1942, the company was faced with steadily diminishing operating revenues. The maximum revenue year was 1925 (\$9,902,768), the minimum year was 1941 (\$6,062,674), a decline of 39 per cent. In 1942 the operating revenue was \$7,574,541, an increase due to the war of \$1,511,867, or 25 per cent over the previous year, and for the 12-month period ended May 31, 1943, there was a further increase, from the same cause, to

Further, page 222:

"Efficient management of a utility produces the service at lower operating costs than does poor management. Good service stimulates greater use by the customers. Both these elements should be considered in fixing the rate of return that should be allowed a utility."

Further, pages 224 and 225:

"The value of the service rendered has been mentioned as one of the elements to be considered in *Smythe v. Ames*, in which the court said the railroad could not charge more than the service was worth to the public. . . . There is no rule at law by which the value of the service may be measured; but it has been stated that the value of the service is considered to be more important than the return to the utility. (Re *Helena L. & R. Co.*, Mont., P. U. R. 1920D, 668; Re *Pocatello Gas & P. Co.*, Idaho, P. U. R. 1923C, 25; Re *Alabama Util. Co.*, Ala., P. U. R. 1932A, 435; *Gay v. Damarascotta-Newcastle Water Co.*, 131 Me. 204, 162 Atl. 264, P. U. R. 1932E, 289.)"

\$8,321,000. The largest factors in this loss of revenue prior to the rate increases in 1937-1938 were the competition of the private automobile and the Municipal Railway.

The financial results of the company's operations for the past 21 years and the disposition of total operating revenue are shown in the following table from Exhibit 10.

	Gross Maintenance Expense	Gross Operating Expense	Total Operating Expense*	Oper- ating Taxes	Depre- ciation	Operating Income	Total Operating Revenue
22	\$1,268,831	\$5,591,207	\$6,860,038	\$604,200	\$320,000	\$1,799,199	\$9,583,437
23	1,298,211	5,535,977	6,834,188	617,100	320,000	2,038,105	9,809,393
24	1,369,923	5,666,285	7,036,208	617,000	320,000	1,879,152	9,852,360
25	1,371,896	5,681,144	7,053,040	617,000	500,000	1,732,728	9,902,768
26	1,416,911	5,976,794	7,393,705	617,000	500,000	1,380,962	9,891,667
27	1,418,361	6,222,507	7,640,858	605,000	500,000	1,073,712	9,819,570
28	1,351,262	6,395,351	7,746,613	607,000	500,000	900,848	9,754,461
29	1,214,684	6,265,754	7,469,477	595,000	500,000	1,025,716	9,590,193
30	1,141,413	6,148,323	7,286,745	556,000	500,000	853,595	9,196,340
31	1,034,810	5,855,759	6,863,606	448,500	500,000	757,216	8,569,322
32	1,007,387	5,538,568	6,535,294	399,000	262,531	608,682	7,805,507
33	946,588	4,997,303	5,939,749	382,000	498,271	587,396	7,407,416
34	935,936	4,864,444	5,941,869	416,000	361,467	553,525	7,272,861
35	837,323	5,068,837	5,902,446	328,009	500,000	593,500	7,323,955
36	926,131	5,004,843	5,918,367	306,500	500,000	783,486	7,508,353
37	955,484	5,024,861	5,972,177	402,000	500,000	305,577	7,179,754
38	880,772	4,706,342	5,582,736	432,000	500,000	(40,234)	6,474,502
39	711,244	4,564,636	5,273,237	424,000	500,000	239,079	6,436,316
40	714,997	4,353,898	5,065,439	416,000	500,000	87,185	6,068,624
41	667,614	4,276,644	4,936,329	416,000	500,000	210,345	6,062,674
42	752,034	4,834,932	5,579,127	325,500	500,000	1,069,914	7,574,541
Mo. ded. ril							
43	841,335	5,171,527	6,007,028	422,500	500,000	1,281,786	8,211,314

Reflects credits for Transportation for Investment and, in 1934 and 1935, additional charges under profit-sharing plan.

) = Red Figures.

Exhibits 1 and 10 show that miles of road operated (single track miles) were reduced from approximately 290 miles in 1922 to 220 miles at the end of 1942, a 24 per cent reduction. Offsetting the reduction in rail track mileage, to a certain extent, was the increase in bus route mileage, which at the beginning of 1938 was about 12 miles and in 1942 approximately 90 miles. Revenue car miles (including bus miles) were, in round numbers, 25 million in 1922 and 17,339,000 in 1942, a decrease of 31 per cent. The lowest point in revenue car miles was

reached in 1939 (16,814,000) and then they fluctuated in the three following years as follows: 1940, 17,044,000; 1941, 16,854,000; 1942, 17,339,000. Total passengers carried in 1922 were approximately 255 millions and in 1942 155,710,000, a reduction of 39 per cent. The lowest number of passengers carried is shown in 1940 (124,777,000). In the following two years there was an increase (1941, 126,241,000 and 1942, 155,710,000). It is interesting to note in this connection that in 1934 the total number of passengers carried was 205 million and for the following two years there was an increase, in 1935 to 207 million and in 1936 to about 215 million. In 1937 and in 1938 the rate increases heretofore referred to became effective and a precipitous drop in revenue passengers and total passengers occurred subsequent to such increases. The figures for the years 1937, 1938, 1939 and 1940 are as follows:

Year	Revenue Passengers*	Total Passengers Carried
1937	141,972,000	188,000,000
1938	111,787,000	144,439,000
1939	95,563,000	129,582,000
1940	89,924,000	124,777,000

* Excluding revenue transfer passengers.

The over-all effect of the Market Street fare increase on the San Francisco local transportation agencies was summarized by Mr. Hunter, who testified that during the five-cent fare period 1933 to 1936 Market Street carried 71 per cent and Municipal 29 per cent of the combined traffic and the revenue followed approximately the same divisions. During the three years 1939 to 1941, inclusive, with the company's fare at seven cents and the Municipal at five cents, the Market Street Railway carried only approximately 52 per cent of the combined fare passengers and received about 60 per cent of the combined passenger revenue.

It is apparent, however, that a considerable portion of passengers lost to Market Street, by reason of the fare

increases, did not subsequently make use of Municipal Railway. This is indicated in Exhibit 1, which shows that the combined traffic of Market Street Railway plus Municipal Railway did not equal the sum of the two separate revenue passenger figures prior to the rate increases. The reasons for this discrepancy seem obvious: a large percentage of lost Market Street revenue passengers consisted of so-called short-haul riders who refused to pay the seven cent fare and who were unable to go to the Municipal system by reason of non-availability of that system in many parts of the city. Mr. Kahn is in agreement with this view.³³ Not even the increased activity resulting from the Golden Gate International Exposition in 1939 and 1940 was able to overcome the continuous decline in passenger revenue on the company's lines. There is no doubt that the loss of short-haul passengers has continued and will continue on Market Street Railway lines during the present war period.

The entire evidence on this item compels the important conclusion that the company will reap no lasting financial benefit from rates in excess of the five-cent fare. For the prewar period this conclusion admits of no doubt whatever. The loss in revenue through loss of patronage was much greater than the gain from the increased fare. In the war period Market Street has gained, as have all transportation systems throughout the country, a large increase in passengers and revenue. This has come about by reason of the rubber shortage, gasoline rationing and the discontinued use of an increasing number of automobiles; together with the enormously increased industrial and military activities. In San Francisco these causes

³³ "MR. APPEL: When the Market Street Railway Company lost riders in 1938 and 1939 did the Municipal Railway absorb all of those riders? A. No, nor was it anticipated that it would absorb all the riders because a careful analysis was made at that time and on lines of Municipal Railway that paralleled those of Market Street Railway it was anticipated that a certain percentage of the riders would shift from Market Street Railway to Municipal Railway, but on other parts of the system which were non-competitive, such a shift of revenue passengers due to the increased fare was not anticipated at all.

"Q. Nor did it take place? A. No."

have had very pronounced impact on the local transportation system and have brought about a great increase in traffic. The demand, this record shows, greatly exceeds the supply, especially during rush hours. This situation will not last. As soon as transportation conditions return to normal the company's seven-cent fare will again be hopelessly handicapped, as it was before the war, against the competing five-cent Municipal fare and the company's financial showing under present conditions of service will be no better than it was in 1941 and 1942. It will grow worse unless the service is greatly improved.

Position of City of San Francisco

The position of the City and County of San Francisco was stated by Angelo J. Rossi, Mayor of San Francisco, and by Edward G. Cahill, manager of the Public Utilities of San Francisco. Mayor Rossi testified that in his opinion "the transportation problem of San Francisco will never be solved until we have a unified system, one fare and one ownership" and further "I am still of the opinion that the only way to do it would be to devise some plan, self-liquidating plan, where the city would eventually own the property of the Market Street Railway Company." The Mayor reviewed the attempts made, in the elections heretofore referred to, to have the people of San Francisco vote bonds to acquire this street railway property. He testified that the Municipal system operating under a five-cent fare showed "a profit now of over a million dollars a year" and that the city had accumulated a good surplus and was willing "to spend that money for equipment if and when the Federal Government will permit us to."

Mr. Cahill testified that the San Francisco Public Utilities Commission strongly advocates a uniform five-cent fare and free universal transfer. He opposed a charge for a transfer between the privately owned and the Municipal systems and testified that such transfer would not be worth as much as one cent.

Our Department of Finance and Accounts introduced evidence showing Comparative Balance Sheet, Profit and

Loss Account, Comparative Income Statement, Operating Revenues and Operating Expenses for the five years 1938 to 1942, inclusive; all taken from the company's sworn annual reports filed with the Commission and from the company's records. Reference has heretofore been made to the earnings of the company during the past twenty years. The record is clear that prior to the war the five-cent fare produced a greater gross and net annual revenue than any fare in excess of five cents.

What increase in traffic a five-cent fare would bring at the present time is not certain, but there is no doubt that it would be substantial particularly at the off-peak periods and also for the reason that a large number of lost short-haul riders would return to the company's lines. In the 'eight months' period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775, compared with \$4,737,856 for the same period in 1942, an increase of twenty per cent. On this basis the total for the full year of 1943 under a seven-cent fare may be expected to be about \$8,700,000. If operating expenses increased to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes the net operating revenues would be \$760,000, which is a return of 9.6% on \$7,950,000,³⁴ the

³⁴ The only available indication in this record of the present value of the company's properties used and useful in the public service is the resolution of its Board of Directors, passed on March 25, 1943. The resolution (Exhibit 9) reads as follows:

"Sale of the Operative Properties of the Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he had agreed with the Mayor and other city officials, as well as the Board of Supervisors, to sell the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco by a revenue bond issue would be sub-

price at which the company offered to sell its properties to San Francisco in 1942 and again in 1943. If a depreciation allowance is made of \$500,000, as set up by the company in previous years, the net operating revenues would be \$1,010,000, or a return of 12.7% on said \$7,950,000. Both of these rates are excessive and unjustified by the present service.

We express no opinion on the reasonableness of the figure of \$7,950,000 as an exact measure of the present fair value of the company's operative property in its present depreciated physical and service condition, with its past earning record and its prospective future under the competitive transportation situation obtaining in San Francisco. We accept the figure as the amount for which the company was willing to sell to the city of San Francisco. Here is an offer by a willing seller, first made in September 1942 and rejected in an election by an unwilling buyer, the voters of the City and County of San Francisco. The same offer was again made six months later by the same willing seller and was again rejected by the same unwilling buyer.

The legal test of "present fair market value" assumes a willing seller and a willing buyer. This legal assumption holds, as in utility condemnation cases, even if the

mitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20, 1943. The President also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

"Whereupon, On motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted.

"Resolved, That the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further Resolved, That the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

seller is unwilling to sell. Here the prospective buyer has repeatedly expressed his unwillingness to buy. It may be taken for granted, therefore, that the price set by the seller is not too low. Nor can it be said that the potential buyer was not fully informed of all the essential facts and circumstances relating to this property. In the last, as in the previous elections the matter had been fully and forcefully presented to the people of San Francisco. The last two offers, it should be noted, were made at a time of abnormally high war traffic and revenue and reflected the temporarily high earning capacity of the company under the present fare.

The fixing of a five-cent fare on a twelve months' basis, without any allowance whatever for increased traffic, and including in operating expenses \$500,000 for depreciation, would result in a deficit of about \$1,153,000. On the basis of the record the indications are that with a five-cent fare a 25% to 30% increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5% return on the \$7,950,000 base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area.

Considering the entire record in this case, we conclude that the continued charge of the seven-cent fare on the lines of the Market Street Railway Company is not justified by either the present service or the past service since the granting of the rate increases by this Commission in 1937 and 1938, and produces an excessive rate of return. Not only has there been no betterment in the unsatisfactory service conditions existing at the time of the rate increases, and which these increases were intended to render, but the condition of track and equipment and the character and quality of the service furnished the company's customers have

grown progressively worse, until in 1941, 1942, and in this year the standard of service has reached the lowest point in the company's history. The war, it is true, has aggravated this condition, but the record is clear that the service was unquestionably poor and inadequate before the war. It was and is poorer and less adequate than the competing Municipal service rendered the public at a five-cent fare. The two-cent increase in Market Street fares, it has been shown, did not, before the war improve the company's earning position and will again produce a loss under more normal transportation conditions. Gross and net earnings prior to 1942 fell to the lowest point in more than 20 years and the loss in revenue passengers heavily outweighed the increase in the fare. The company, prior to the war, would have been financially much better off under the continued five-cent fare.

The record clearly indicates that the number of revenue passengers will be substantially greater with a lower fare than with the present seven-cent rate. In the prewar period we may safely assume that this number, with a continued five-cent fare, would have been about as large, taking into account abandoned lines and expansion of Municipal operations, as it was prior to the rate increases in July 1937. The fare increases in 1937-1938 were gradual and experimental. We think a decrease at this time should also be gradual and must of necessity be experimental. We shall, at this time, reduce the Market Street Railway Company fare by only one cent and fix a six-cent cash fare as an interim rate. Consideration of service alone and of the value of such service to the patron would justify the fixing of a five-cent fare.

We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net

operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions.

We find that a six-cent fare, under the circumstances reflected in this decision, is a just, fair, and reasonable rate, provided, however, that every possible and reasonable effort will promptly be made by the company to furnish an improved service. We shall expect the company to file, in the form designated by us, monthly reports showing service and traffic conditions, and the financial results of operation.

This proceeding will be kept open for such further investigation and such further order or orders as may be necessary and just and reasonable.

We adopt the following order.

Order.

The Commission having instituted an investigation on its own motion into the reasonableness of the rates, practices, and service of the Market Street Railway Company, public hearings having been held, the Commission being apprised of the facts, and the matter being under submission and ready for decision, and based upon the foregoing opinion:

It is ordered that Market Street Railway Company is hereby directed and authorized to file, on the effective date of this order, and to make effective upon one (1) day's notice to the Commission and to the public, the following change in its fare structure for the transportation of passengers between points on its system in San Francisco:

Base cash fare, or token fare, changed from seven (7) cents to six (6) cents;

Other present fares to remain in effect, including the established free transfer privileges between the various lines of this carrier as well as the established transfer arrangement between Market Street Railway Company and both the lines of San Francisco Municipi-

pal Railway and the California Street Cable Railroad Company.

It is further ordered that Market Street Railway Company shall file with this Commission, in addition to the information required by General Order No. 65,

- (1) a monthly statement showing the traffic carried, segregated as to the different classes of fare;
- (2) a monthly statement, in the form approved by the Commission, showing changes in service and in manpower conditions.

The information referred to in (1) and (2) shall be filed with the Commission not later than twenty (20) days following the termination of the month of operation.

It is further ordered that this proceeding shall remain open for further investigation by the Commission.

It is further ordered that the Commission reserves the right to make such further order or orders in this proceeding as to it may seem right and proper.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 30th day of November, 1943.

FRANCK R. HAVENNER

RICHARD SACHSE

FRANK W. CLARK

Commissioners.

Certified as a true copy. (Seal) H. G. Mathewson, Secretary, Railroad Commission of the State of California.

Concurring Opinion

I concur in the opinion of my fellow commissioners and am in accord with the Commission's order in this proceeding. There is found in this record, however, much testimony not mentioned in the preceding decision and of importance in support of the Commission's order and I think reference should be made to some of this testimony.

The decision emphasizes, rightly I believe, the well-established economic and legal principle that the rate to be paid by the public for a utility service must bear a reasonable relationship to the value, quality and character of such service. In this case we are considering the value of street railway service not from a theoretical viewpoint but in the light of the actual transportation conditions as we find them in San Francisco at the present time and as they have existed for a number of years. The service of the Municipal Railway permits of a direct comparison with Market Street Railway service. The steady decline in the adequacy and quality of the company's service during the last ten years, and the fact that the rate increases granted by this Commission in 1937 and 1938 did not correct that decline, is amply substantiated in this record. The war has forced the acceptance by the car riders of still poorer and more inadequate service, while the company is profiting from the abnormal increase in traffic and congestion by high net revenue and an unreasonably high rate of return.

These facts as they are set forth in the preceding opinion sufficiently support the Commission's order. The courts have generally required, however, in addition to the test of the value of the service to the rate payer, a second test of the reasonableness of a public utility rate, viz., the reasonableness from the standpoint of the utility. The Commission may not fix a rate resulting in confiscation of the company's property used and useful in the public service. This test requires a consideration of past and present revenues and expenses, of investment and rate base, of rate of return and an intelligent consideration of these items in the probable near future. Further, we must not ignore any other important and relevant fact having a bearing on the reasonableness of the rate both to the utility and the ratepayer. All of these requirements are understood of course, and recognized by the Commission. The preceding opinion refers only briefly to these items, although the record is by no means silent on the requirements of this second test of a just and fair utility rate.

Earnings

The record shows that the company's net earnings after proper operating expenses, including depreciation and taxes, have at no time during the five years 1937 to 1941, inclusive, produced sufficient income to meet fully the company's fixed charges. This is apparent from Exhibit 1, where the column "Deductions from Gross Income" indicates payments for interest on funded and unfunded debt, amortization of discount on funded debt and certain small items of miscellaneous debits. The figures for the five-year period taken from the exhibit are as follows:

(Here follows 1 Exhibit)

48A

Year	(a) Operating Revenue \$	Operating Expenses Excluding Depreciation and Taxes \$	Depreciation \$	Taxes \$	Operating Income \$	Non- Operating Income (Net) \$	Gross Income \$	Deductions from Gross Income \$	Net Income \$
1937	7,179,754	5,972,177	500,000	402,000	305,577	10,588	316,165	484,115	(167,950)
1938	6,474,502	5,582,736	500,000	432,000	(40,234)	10,840	(29,394)	466,431	(495,825)
1939	6,436,316	5,273,237	500,000	424,000	239,079	6,979	246,058	451,008	(204,950)
1940	6,068,624	5,065,439	500,000	416,000	87,185	5,720	92,905	358,715	(265,810)
1941	6,062,674	4,936,329	500,000	416,000	210,345	8,267	218,612	333,422	(114,810)

() = Red Figures.

(a) = Consisting of Passenger Revenue and Other Revenue.

This unsatisfactory earning condition, including the period during which the 40 per cent rate increase from 5 to 7 cents granted by the Commission was in effect, was in fact worse than shown in the preceding tabulation. This is true for the reason that the company throughout its entire history has made inadequate provision for depreciation of its operative property. Further, such insufficient and arbitrary depreciation appropriations as have been made from year to year since 1921 have in part been expended not for the necessary replacements of fully depreciated plant and equipment but in payment of interest and for other purposes not related to maintenance of service and renewal of plant. The cost of depreciation is an operating expense and is allowed for specific replacement purposes.

Witness Mors, the Commission's transportation research engineer, in Exhibit 10 states, in part, as follows:

"The annual appropriations appear to have been decided upon arbitrarily and not based upon any depreciation study. For the first four years 320,000 was added to the reserve each year, and since 1924 the appropriation has been \$500,000 per year, with the exception of three depression years, 1932, 1933, and 1934, when it varied from \$263,000 to \$498,000."

Exhibit 10 shows that the depreciation appropriations made by the company were insufficient and that if proper depreciation rates had been applied to the recent depreciable property, based upon a valuation made in 1920, a straight line annual depreciation accrual of approximately \$780,000 would be required. Witness Mors in Exhibit 10 says:

"Had adequate depreciation expense been charged against operations and credited to the depreciation reserve, the company would have shown a net operating loss each year for at least 5 years prior to 1942. If adequate provision is not made or cannot be made

for current depreciation the inevitable result is that some of the capital investment is consumed."

A review of the record with reference to the company's earnings in relation to the service offered its customers establishes the important fact that no rate of fare, 5 cents or higher, would or could in prewar and normal times produce any operating profit or any rate of return on any property valuation or rate base. The operations of the company under the service conditions as they existed in the five years prior to 1941 produced an annual deficit each year and the deficit was greater in the years when the increased fares were charged than during the 5-cent fare period. Only an improved service, with more modern and economical plant and equipment, under reasonably efficient management, and in financially solvent ownership, could have brought about profitable operation under fair and reasonable rates. The same compelling economic forces will be operative in the future and no sound purpose is served by ignoring these realities.

Investment, Rate Base, Rate of Return

The road and equipment account of Market Street Railway is not segregated by primary accounts, as provided for in the Uniform System of Accounts for Electric Railways, but is carried in the books as the sum of two accounts, namely (1) Railroads, Properties, and Franchises, and (2) Additions and Betterments to Road and Equipment.

The company's general ledger shows the following amounts in these two accounts as of April 1, 1921:

Ac. 401—Railroads, Properties, and Franchises	\$46,775,296.95
Ac. 401—Additions and Betterments to Road and equipment	75,973.96
Total Road and Equipment	\$46,851,270.91

Additions and betterments and retirements have been reported annually to the Commission by primary accounts. These are summarized in Table 6-1 of Exhibit 10, the additions by groups of property and the retirements in total.

The book amount of road and equipment as of December 31, 1942, \$41,768,505, was 87 per cent of the amount in the peak year 1926.³⁵

The Commission has never investigated the correctness or reasonableness of the company's book entries and to what extent they represent actual cash investment in present used and useful property, and to what extent predecessor book entries, valuation writeups and so-called intangibles are represented in the original 1921 entry. There is included in the December 31, 1942 total the sum of \$5,119,191.30 for "General and Miscellaneous," including \$847,953.20 Law Expenditures; \$3,133,405.47 Interest During Construction, and \$571,415.47 Miscellaneous.

The Commission's Department of Finance and Accounts (witness Donovan) introduced Exhibit 2, showing Comparative Balance Sheet, Profit and Loss Account, Comparative Income Statement, Operating Revenues and Operating Expenses for the five years 1938 to 1941, inclusive; taken from the company's annual reports filed with the Commission, and from company records. Below is reproduced the bal-

³⁵ In response to a request by the Commission the company submitted with its 1941 and 1942 annual reports a segregation of road and equipment by primary accounts. In submitting this schedule in 1941 the company made the following statement in a letter to the Commission:

"As requested, we are enclosing as a supplement to our 1941 report, Schedule 211, Road and Equipment, segregating this investment as between rail and motor coach properties.

"This schedule, for the first time, gives a breakdown of property values by primary accounts; which values have been obtained from a schedule prepared by Mr. A. R. Franklin in an income tax case some time ago. The motor coach values at December 31, 1940, with the exception of Account 530, represent the estimated value of our investment in our motor coach garage, formerly our Twenty-fourth Street Car House, the value being obtained from the Railroad Commission's valuation of 1920."

ance sheet, with primary asset and liability items, as of December 31, 1942:

Assets and Other Debits

Road and Equipment	\$41,769,229.27
Sinking Funds	27,352.76
Investments	3.00
Current Assets	1,571,705.03
Unadjusted Debits	165,204.61
Reacquired Long Term Debt	25,000.00
Total Assets and Other Debits	\$43,558,494.67

Liabilities and Other Credits

Capital Stock Outstanding	\$31,926,450.00
Long Term Debt	5,994,873.96
Current Liabilities	906,476.00
Unadjusted Credits Other than Reserves	187,424.18
Reserves	1,274,500.31
Profit and Loss	3,268,770.22

Total Liabilities and Other Credits \$43,558,494.67

In the liability item "Reserves" is included a depreciation reserve of \$1,023,886.71. Applying normal accounting methods and practices, this would indicate a depreciated investment in road and equipment of \$40,745,342. Obviously this figure has no relation whatever to the actual depreciated value of this company's operative property in its present condition.

The so-called investment figures, depreciated or undepreciated, have no bearing on property value, rate base or actual accrued depreciation, as such factors would be considered in a rate case or in the present proceeding. This is evident from a comparison of the balance sheet asset totals with the company's offer to sell its operative property to the City of San Francisco for \$7,950,000 cash.

A historical cost valuation was made by the Commission's engineering department as of June 30, 1920, upon the request of the city. It may be noted that this June 30, 1920,

valuation compares with the April 1, 1921 company's investment figure as follows:

(1) Company figure: Investment, Road and Equipment, undepreciated, April 1, 1921	\$46,851,271
(2) Historical Cost Estimate, undepreciated, June 30, 1920	29,715,147
(3) Difference	\$17,136,124

It is not practicable to bring these figures to reliable present amounts for purposes of this case. The accumulated depreciation in the property to 1943 would have to be ascertained and deducted from an undepreciated historical cost estimate, taking account also of retirements and additions and betterments, and new capital expenditures, in order to produce a present historical cost valuation estimate. This large task has not been undertaken and is not required and would be of no assistance, in my opinion, to reach a sound and fair decision in this case. A better measure of the maximum present value of the operative property is available and has been given consideration in the Commission's decision.

Nor is a reproduction cost estimate, undepreciated or depreciated, as of the present date required for the purposes of this case and if so large, costly and time-consuming task were undertaken the result would not assist the Commission in reaching a just and fair decision. This is apparent for several reasons: A reproduction cost estimate on any basis could only be speculative and theoretical, since under no conceivable circumstances would this property be reproduced in its present shape, including cable cars and other obsolete property, and in its present neglected and inadequate physical and service condition. Any attempt to estimate present day costs of duplicating the existing plant and equipment would run into absurdities and contradictions. Cable car systems are no longer constructed, nor could much of the existing electric rail equipment be purchased today. It is no longer produced and more modern, more efficient and economical street cars have been available for

years. In no event would a number of the company's rail lines be rebuilt or reproduced since better and much more profitable motor coach service would in reality be substituted. There is the further consideration that during the war period no reproduction could in fact take place; construction materials and equipment cannot be purchased; construction labor is not to be had; present costs and prices for such reproduction and construction cannot be ascertained.

The fact that the true present value of an obsolete street railway system cannot be found by a historical reproduction cost estimate, or by estimates of reproduction cost new, depreciated or undepreciated, or by review of original book cost, has been repeatedly demonstrated in proceedings before this Commission. The most recent such demonstration is the Sacramento street railway, where in Decision No. 36,663, decided this month, the Commission approved the sale of this electric street railway and motor coach property for \$450,000, when at the same time the undepreciated historical cost of this property was \$2,318,699.³⁶

³⁶ In Decision No. 36663, in Application No. 25794 of Pacific Gas and Electric Company to sell its electric street railway and motor bus transportation system in the City of Sacramento to Sacramento City Lines, the Commission says: "In Exhibit 3 filed at the hearing had on this application the undepreciated historical cost of the Sacramento street railway and motor bus line properties to be sold to Sacramento City Line as of September 10, 1943, is reported at \$2,318,699. It is of record that this cost is predicated upon the company's 1919 historical appraisal and that to such appraisal has been added the net book cost of additions and betterments. Pacific Gas and Electric Company's books as of August 31, 1943, show against such properties a reserve for accrued depreciation of \$841,026. The company has agreed to sell the properties to the Sacramento City Lines for the sum of \$450,000 plus the assumption by Sacramento City Lines of Pacific Gas and Electric Company's contractual and other lawful obligations in connection with the ownership and operation of said properties other than pending actions or subsequent torts or court actions arising out of incidents that shall have occurred prior to the actual transfer of said properties to Sacramento City Lines and exclusive of Pacific Gas and Electric Company's bond mortgage or deed of trust. Sacramento City Lines will assume the payment to the City of Sacramento of \$50,000 if and when it abandons the operation of the Number 3 ear line and the Number 6 ear line. This liability is covered by an agreement of April 17, 1942 by and between Pacific Gas and Electric Company and the City

If the offering price set by the company for its property is accepted as a measure of present value and as a rate base, we find net earnings and rates of return for the last five years as follows:

(1)	(2)	(3)	(4)	(5)	(6)
Year	Rate Base (a)	Operating Income (b)	Operating Income (c)	Rate of Return (d) Per Cent	(e)
1938	\$7,950,000	\$ (40,234)	\$(320,234)	(0.51)	(4.03)
1939	same	239,079	(40,921)	3.01	(0.51)
1940	same	87,185	(192,815)	1.09	(2.43)
1941	same	210,345	(69,655)	2.65	(0.88)
1942	same	1,069,914	889,914	14.72	11.19

() = deficit.

Notes:

(a) Rate Base, column (2), for purposes of this calculation, is assumed the same for each year; value of property should be lower prior to 1942 because net earnings were much smaller or altogether absent.

(b) Operating income, column (3), according to company's accounting methods, is operating revenue, less operating expenses, taxes, and depreciation in amount apportioned by company of \$500,000 each year.

(c) Operating income, column (4), is adjusted by fixing depreciation expense in the more nearly adequate amount of \$780,000, as testified to by Research Engineer Mors. Company has increased depreciation expense for 1943 to \$750,000.

(d) Based on column (3).

(e) Based on column (4).

All valuation estimates of reproduction cost, or historical cost, together with consideration of book cost, investment figures, value of securities and other criteria of property value have, in rate cases, one main purpose: to assist in the finding of the present fair value of the operative property. In this proceeding we have the management's and the company's board of directors' final judgment of present value expressed not as an estimate or a theoretical figure but in the form of a binding offer to sell at a definite price. Such a determination of present value, it seems to me, is consistent with the actualities and much superior to speculative engineering and accounting estimates.

In its decision the Commission has estimated that a 6-cent fare will produce an approximate rate of return of 6 per cent on the base figure of \$7,950,000. The company itself,

of Sacramento, which agreement is filed in this application as Exhibit 2.

"It is of record that Pacific Gas and Electric Company may sustain, on account of the sale of the properties, a book loss of about \$1,027,673. It is the company's intention to charge this to surplus, subject to an offset resulting from a tax saving because of the loss."

according to the record, can determine within considerable limits what its net earnings and rate of return will be under the 6-cent fare. If better service is provided and the maximum amount of the available equipment placed in operation, greater net revenues and a higher rate of return will of course be obtained than with poor service and much idle equipment. The continued investigation of the company's affairs and the filing of monthly traffic and service reports as provided for in the order will enable the Commission to take whatever appropriate action may further be required in this proceeding.

[SEAL.]

RICHARD SACHS,
Commissioner.

Concurring Opinion

Commissioner C. C. Baker and Justus F. Craemer

In view of the case-history of the Market Street Railway Company of recent years, as reflected from the record herein, our opinion is not in conflict with the conclusion of the majority with respect to the objective of providing for a material improvement in the quality of the service, nor in conflict with the conclusion that the basic fare be reduced to six cents, upon an experimental basis. By reason thereof, and upon the distinct understanding that such fare reduction is to be deemed experimental in character, under wartime conditions, we hereby concur in the said twofold conclusion as set forth in the attached decision.

Viewed as a plan whereby to determine the operating conditions that would obtain through the combination of improved service and a reduced fare structure, together with the fact that the results thereof must be considered decidedly problematical, it is our view that the experimental period should not be of indeterminate duration, but rather for some specific unit of time, during which period the required reports, together with other pertinent matter, would be subject to review by the Commission's staff, as well as by other interested parties, to the end of determining whether a continuation of the experiment be justifiable.

There can be no doubt, of course, but that operations during a reasonable experimental period, upon the basis indicated, will afford an opportunity to test the conclusion of the majority in the face of conditions rendered both abnormal and extraordinary by reason of war-time activities.

It is likewise obvious that, during such experimental period, the volume of traffic on the Market Street Railway System must be materially increased, for otherwise the proposed plan cannot effect a solution of the problem. Such increase in the volume of traffic, of course, will necessitate an increase in the frequency of the service, which in turn, will require both additional equipment and additional manpower, with attendant increase in the cost of operations. All this may be achieved, with attendant benefit to both the transportation agency and the patronizing public. On the other hand, the result may be wholly negative with reference to the desired end. It is thus primed with the element of conjecture.

This proceeding was instituted by the Railroad Commission on its own motion. It thereby assumed full responsibility in the premises, including the burden of proof. But should the experiment fail of its objective, upon the basis of an indeterminate experimental period, then, in such event, the burden would be shifted to the respondent. It would be otherwise in this particular if the proposed plan were based upon an experimental period of specific duration. Furthermore, should the proposed plan prove in effective, the necessary adjustments to follow would be much more simple, from the standpoint of procedure, and involve much less expense, if the experimental process were subject to a definitely defined period.

We deem it a matter of regret, therefore, that the majority hold to a contrary view with respect to the fixation of a definite experimental period, like unto the practice of the Interstate Commerce Commission in certain cases of recent times, as against the indeterminate period that will obtain under the said majority decision.

For the reason thus indicated, together with other reasons, it is not without reluctance that we thus concur in the conclusion of the majority, as hereinbefore specified.

This is, therefore, a concurrence with both limitations and reservations. And it is to be further understood that nothing herein contained may be construed as a concurrence in, or an adoption of, those portions of the majority opinion not herein subjected to specific objection; for be it known that we are in disagreement with the majority opinion with respect to certain of the reasoning processes therein noted, as well as to a number of the assumptions and deductions thereof, and also with reference to the relevancy and the application of some of the cases therein cited in support of the line of reasoning of the majority opinion.

C. C. BAKER,

JUSTUS F. CRAEMER,

Commissioners.

[SEAL]

EXHIBIT 2

Decision No. 36,821

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Case No. 4680

In the Matter of the Investigation Upon the Commission's Own Motion into the Reasonableness of the Rates and Charges, and into the Sufficiency and Adequacy of the Operations, Service, and Facilities of the Market Street Railway Company.

Cyril Appel, Ivores R. Dains, and Samuel Kahn, for the Market Street Railway Company.

Angelo J. Rossi, Mayor; John J. O'Toole, City Attorney; Dion R. Holm, Assistant City Attorney, and Paul Beck, for the City of San Francisco.

Mrs. Helen Negrin, in propria persona.

Additional Appearances on Petition for Rehearing:

Felix T. Smith and Henry G. Hayes, for Market Street Railway Company.

Douglas Brookman, for Congress of Industrial Organizations (CIO), and George Wilson, President of CIO.

Opinion on Petition for Rehearing

By the Commission:

Petition for rehearing of the Commission's decision No. 36739 rendered November 30, 1943, was filed by the company on December 9, 1943. On December 15, 1943, we made our order granting oral argument before the Commission en banc and extending the effective date of decision No. 36739 until further order by the Commission. Argument was heard on December 21 and 22, 1943, Mr. Felix Smith arguing for the company, Mr. Dion R. Holm for the City and County of San Francisco, and Mr. Douglas Brookman for the Congress of Industrial Organizations, which has in excess of 35,000 members in San Francisco, who with their families constitute a very substantial group of riders on the street railway system of the company. Permission was granted to representatives of various organizations and to individuals present at the hearing to express their views on the matter before us.³⁷

³⁷ Dr. L. W. Hosford, President of Jefferson Lafayette Improvement Club, et al.

Mrs. Gertrude Lincoln, for Women's Welfare League, et al.

Eugene E. Pfaeffe, President of San Francisco Retailers' Protective Association.

George W. Gearhard, Secretary of Civic League of Improvement Clubs and Associations of San Francisco.

J. F. Calverley, President of Southern Council of Civic Clubs.

Mrs. Sulvina Ratto, Financial Secretary of Central Mission Improvement Association.

Adolph Petry, Chairman of Transportation and Traffic Committee of the Central Council of Civic Clubs.

Erwin C. Easton, Attorney for North Central Improvement Association.

Mrs. Rose Walker, President of Greater Mission Improvement Association.

R. J. O'Rourke, President of San Francisco Property Owners' League.

Lloyd Taylor, Executive Secretary of Market Street Association.

According to its petition the company seeks a rehearing on the following grounds:

(1) That due process of law has been denied the company

“in that the Commission has ordered the company to reduce its rates or fares without giving notice that it was being charged with the maintenance of rates that were unreasonably high, or in any other respect unlawful, and without according a fair and complete hearing upon that issue”;

(2) that the Commission

“has acted arbitrarily and capriciously, in that it has ordered a reduction in the company's rates without having any substantial evidence before it that the rates now charged are in any respect unreasonable”;

(3) that the Commission's order reducing the company's rates from seven cents to six cents

“amounts to a taking of its property without compensation and the confiscation of its property”.

In general, our order is alleged to be in violation of the Constitution of the State of California and of the 14th Amendment to the Constitution of the United States.

These three allegations are subdivided and elaborated in the petition for rehearing and it is the purpose of this decision to consider them on the basis of the present record in some detail.

~~The Company Did Have Notice That the Reasonableness of Its Street Railway Fares Were at Issue in This Proceeding and Was Accorded a Fair and Complete Hearing Upon that Issue.~~

The petition alleges that “At no time during the hearing was any statement made by the Commission which would put the Company upon notice that the reasonableness of its rates was an issue or that it must be prepared to meet that issue”. This is an astounding statement in view of

the record and is completely contradicted by the nature, scope, and course of the present proceeding. The title of the proceeding, the text of our order instituting this investigation on the Commission's own motion,³⁸ the opening statement of the presiding Commissioner on May 10, 1943, the first day of the hearing,^{38a} all gave clear, definite, and unmistakable notice to the company that the reasonableness of its rates and charges, as well as its service and facilities, would be investigated by the Commission. We proceeded with this case in method and in form exactly as in other similar proceedings involving rates and service of transportation and other utilities.³⁹ It may be said that

³⁸ The first two paragraphs of the Order Instituting Investigation read as follows:

"The Commission believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing,

"It is ordered that an investigation be and hereby is instituted upon the Commission's own motion into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said Company."

^{38a} "Commissioner Havenner: The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the reasonableness of the rates and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company." (Tr. 2.)

³⁹ Among proceedings on the Commission's own motion into the reasonableness of rates and service have been the following:

• Case 4688, Vallejo Electric Light & Power Company (current proceeding).

Case 4672, Vallejo Bus Company, decision 36242, 3-23-43.

Case 4612, Bay Cities Transit Company, decision 36042, 12-15-42.

Cases 4621-2, Pacific Gas & Electric Company (gas service), decision 36082, 12-29-42.

Case 4478, Interurban Electric Railway Company, Key System, East Bay Transit Company (1940) 43 C.R.C. 181.

Case 4461, Pacific Electric Railway Company, Los Angeles Railway Corporation, Los Angeles Motor Coach Company (dismissed by decision 36338).

Cases 3477, 3604, Southern California Telephone Company et al. (1934) 39 C.R.C. 164.

this form of procedure in rate and service cases brought upon the Commission's own motion, has over a period of more than thirty years been a regularly established and recognized practice of this Commission. This same practice is regularly followed by other state and federal commissions.

The company's management and its counsel understood that this was a rate as well as a service investigation and recognized that service and rates were inseparable and interdependent and must necessarily be considered together. Mr. Kahn, the company's president, appearing as the company's first witness, testified from a prepared statement, commenced his testimony with a review of the rate situation since 1937 when the 5-cent fare was in effect. He reviewed several rate changes authorized by the Commission and their effect upon the company's traffic, revenue, and service. (Tr. 235 et seq.) He similarly reviewed (Tr. 246) the company's experience with the 7-cent fare and introduced company's exhibit No. 22, estimating what income in his opinion a 5-cent fare would have produced during certain periods in the years 1937, 1938, and 1939. Mr. Kahn's testimony was in fact addressed principally to the matter of rates and to the revenues produced by various rate structures.

Mr. Appel, company's counsel, through Mr. Kahn introduced in evidence company's exhibits Nos. 24 and 25, which are this Commission's decisions Nos. 31472 and 31603, respectively, in application No. 21115. That application was made by the company in 1938 for an order of this Commission "authorizing emergency increases in certain fares" and the decisions referred to, granting experimental increases, are rate decisions. Decision No. 31472, rendered on November 23, 1938, and reported in 41 C. R. C. 651, re-

Case 3153, San Diego Consolidated Gas and Electric Company (1935) 39 C.R.C. 261.

Case 3008, San Joaquin Light and Power Corp. (1932) 37 C.R.C. 530.

Case 3026, Midland Counties Public Service Corp. (1932) 37 C.R.C. 530.

Case 3424, Pacific Gas and Electric Company (natural gas) (1933) 39 C.R.C. 49.

viewed the prior rate decisions numbers 29889 and 30849 theretofore rendered in the same proceedings and stated "In decisions numbers 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory".⁴⁰

It must be remembered that the decisions referred to were made in compliance with the company's application to authorize "emergency increases in certain fares". The company, under the rules of the Commission, has regularly filed revenue and operating statistics and the Commission has continually kept abreast of the results of the fare changes. In a real sense, therefore, this has been and is now a continuing rate investigation. The Commission's order in the present case is made on that basis and provides for the regular filing with the Commission of future monthly traffic, revenue, and service statements and provides further "that this proceeding shall remain

⁴⁰ In Decision No. 29889, 40 C.R.C. 525, the first decision in application No. 21115, the Commission said:

"In reviewing this record, the Commission is not convinced that applicant's proposed fare structure is one which best meets the situation, in fact the President of the company has stated that no consideration has been given to any other form of fare (Tr. p. 52); that the estimates were of necessity only a guess; and that experience alone could tell what results would obtain if the proposed fare structure were put into effect.

"The Commission has given considerable thought to the matter of selecting a fare structure which will result in the least disturbance of traffic and at the same time provide the needed revenue in the most equitable manner. In our search for such a fare structure we have given consideration to applicant's plan, and have likewise given consideration to a number of forms of fare, such as a straight 6-cent cash fare, zone fares, and the existing 5-cent fare in combination with a 2-cent charge for a transfer.

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

open for further investigation by the Commission". In fact, all of the proceedings involving the reasonableness of the fares of Market Street Railway Company, including the present proceeding, have been kept open and tentative rates established subject to readjustment from time to time as the results of experience may require. We shall again refer to this policy of fixing rates for public utilities. It must be obvious, however, that this policy of establishing tentative rates subject to readjustment as the results of experience may require, which policy is now generally followed by regulatory bodies, best serves the interests of the public as well as the utility, and assures the fairest results to both.

This record is voluminous on the subject of rates and fares. Mr. Hunter, the Commission's chief engineer, in his testimony relating to fares compared the company's fares with the average streetcar fares throughout the United States and said (Tr. 220) that San Francisco's average length of haul is among the lowest in the country, producing a higher fare per mile of travel. He also testified to the relationship of fares to service. Witness Mors, the Commission's transportation research engineer, testified to the company's rate history and in Commission's Exhibit No. 10 extensively reviewed the results of the company's operations from 1922 to 1942. This exhibit contains the company's rate history, an analysis of fare structures comparing the effect of the single cash fares with the so-called token fares, the effect of fare changes on operating revenue, and the revenue and passenger trends under various fare structures up to and including a portion of the year 1943. Mr. Cahill, manager of Public Utilities of San Francisco, testified (Tr. 83) that the San Francisco Public Utilities Commission strongly advocates a uniform 5-cent fare and universal transfer and (Tr. 99) that there should be no charge for transfers and that they would not be worth as much as one cent. With respect to the effect of fare increases of 1937-1938, witness Hunter (Tr. 11, 12 and exhibit 1) testified to the fare passengers and passenger revenues of Market Street and Municipal railways for the years 1933 to 1943. Witness Mors on the same subject testified re-

garding the effect upon operating revenue of a 2-cent transfer charge and the sale of tokens. (Tr. 115.) Mr. Kahn testified on the loss of his company's traffic to Municipal Railway after the company fare was increased above the 5-cent rate. The record is voluminous with respect to trends of earnings on the various fares and the effect of the fare changes on the company's net income.

This brief review of the record in so far as it deals with the company's fares and their effect on traffic, revenue, and service is by no means complete. It is a conclusive answer to the company's allegation it had no notice that the reasonableness of its rate was an issue. The petition on this point concludes with the following paragraph:

"Even now, the company is not advised by any clear statement in the Commission's opinion on just what theory or basis the Commission premises its order reducing the company's rates. The opinion does not disclose whether the Commission has taken such action upon some theory that it might now undo a supposed mistake of the Commission itself made in 1937 and 1938 when it permitted the company to increase its rates from 5 cents to 7 cents; impose a rate reduction merely as a punishment to the company for failure to render a transportation service of some higher standard; or endeavors to fix just and reasonable rates for the future."

This observation we think is gratuitous. Decision No. 36739 is self-explanatory and states the basis on which the order reducing the rate from seven cents to six cents rests. There is no finding and no implication that we proceeded on a theory intending to "undo a supposed mistake" made in 1937 and 1938, when the rates were increased by stages from five to seven cents. Those increases, as heretofore pointed out, were specifically designated as an emergency increase and the three decisions in application No. 21115 leave no doubt that the authorized fares were experimental and subject to revision and adjustment depending upon developing conditions and cir-

cumstances. The one-cent rate reduction made in the decision here under consideration was not imposed "as a punishment to the company for failure to render a transportation service of some higher standard" but because of changed conditions and circumstances the Commission finds that a rate in excess of six cents is unreasonable and excessive. The decision is specific that the character and quality of the service rendered by the company does not justify a rate higher than six cents and that with such rate the company will be able to earn a fair return on the rate base, provided a reasonably adequate service is furnished and the necessary amount of available equipment is placed in operation.

Reference should here be made to the company's apparent protest in its argument on the petition for rehearing against the Commission's consideration of Exhibit No. 33.⁴¹ That exhibit is referred to in the transcript under the des-

⁴¹ Mr. Smith (Tr. 354) said:

"Now, this matter of procedural due process of law also requires that the testimony, the evidence, upon which the Commission acts be taken at the hearing so that the other party may have an opportunity to controvert it and to criticize it.

"This record is most curious. The Commission's decision discloses, and affirmatively, that the Commission used an exhibit, Exhibit No. 33, that was never mentioned at the hearing, never made available to the other party."

And further:

"The Commission's decision speaks of a Commission's exhibit No. 33. I am reading from the first page of the opinion: 'Our staff made its studies and investigation in part prior to the hearing of May 10, and in part during the course of the proceeding, and introduced the results in the form of 18 exhibits.' Then there is a footnote and it lists various exhibits, including No. 33. Now, either this opinion misstates that upon which it acted, or I can't read the opinion, because it seems to me very clear that the opinion says that Exhibit No. 33 was introduced by the Commission, and it was one of the results of the Commission's studies and investigation of the case. Now, I would be very glad and very much relieved if I find that the Commission's staff did not introduce an exhibit of that kind.

"Commissioner Sachse: I think that situation with reference to Exhibit 33 is very clearly set forth on pages 341 and following and it really starts at page 340 and then runs through to 342."

ignation "To be furnished figures on Passengers and Car Hours" and pertains to Exhibit No. 22, introduced by company's witness Kahn, entitled "A study to determine the net income of the Company for the first six months of calendar years 1937, 1938 and 1939 if a 5¢ fare with free transfer had been in effect". In Exhibit No. 22 the number of passengers for the periods covered had been estimated by Mr. Kahn but the number of passengers actually carried by the company during the three periods was not shown in the exhibit. In the examination of company's witness Newton on September 15, 1943, exhibit 22 was under discussion and the question was asked of Mr. Newton whether the record contained the actual number of passengers carried and the actual number of car hours operated by the company in the three periods, as distinguished from the estimated figures in exhibit 22. The company agreed that these actual operating figures should be in the record and that they were to be given exhibit number 33.⁴² We see no reason why

⁴² Tr. 340, *et seq.*:

"Commissioner Sachse: Have we now in the record the actual number of passengers that were carried on the Market Street lines in the three periods that are shown on the last page of that exhibit, namely, the first 6 months of 1937, first 6 months of 1938 and the first 6 months of 1939, and there also are in addition, the actual number of passengers that were carried, the actual number of car hours that were operated?"

"Mr. Hunter: We have as to passengers and I think as to car hours.

"Commissioner Sachse: My point is in order to compare—

"Mr. Hunter: Yes.

"Commissioner Sachse: —the actual figures with those estimates. We can have that, we should have those figures. They, of course, are available in the records by months, the first 6 months of 1937, the first 6 months of 1938 and the first 6 months of 1939, both passengers and car hours?"

"Mr. Cassidy: May we be excused just a moment? We are checking.

"Commissioner Sachse: Certainly, Mr. Hunter, you do not have to look that up now, just so it may be understood, with the agreement of Mr. Appel, that that will be considered, that information will be considered part of the record.

"Mr. Cassidy: I would suggest, Mr. Commissioner, when those figures are available, that they be put in as an exhibit with a number reserved.

exhibit 33 should not have the Commission's consideration in this record.

The Commission Has Not Acted Arbitrarily or Capriciously in Reducing the Company's Rates from Seven Cents to Six Cents and Has Not Acted Without Any Substantial Evidence That the 7-Cent Rate Is Unreasonable.

The petition for rehearing states:

"In so far as the Commission may have premised its order reducing rates upon the theory that rates should be no higher than the value of the service rendered, the Commission has acted without substantial or any evidence before it by which the value of the transportation service being rendered by the company can be measured."

This allegation is unfounded in fact. The extent, character and quality of the company's service at the time of the investigation is referred to in decision No. 36739 and findings are made. The record is replete with testimony on past and present service conditions and with comparative service statistics. There is nothing unusual or difficult about service measurements of street railway service. In the case before us no speculative or theoretical standards need be referred to. The record contains the company's actual operating performance for past years as reported in the company's sworn annual reports to this Commission and in the monthly reports filed with us. Such performance is shown in the operating expenses under the several accounts, in the number of cars operated, in the schedules and their performance, in the load factor statistics, in the maintenance records of roadbed, track and equipment, in the depreciation and renewal practices, in the observance of the company's paving obligations under its franchise require-

"Commissioner Sachse: Very well.

"Mr. Cassidy: So that might actually be in the record.

"Mr. Appel: We will have no objection to that, to furnishing you whatever information you desire on that line.

"Commissioner Sachse: That information, then, would have the exhibit No. 33."

ments, and in other actual operating and service records. Such evidence in this case permits of ready and exact comparison of service and operating conditions and standards as they existed when the fare was five cents and under the increased fares subsequent to 1937, and under the 7-cent fare at this time. We find less and greatly inferior service in all respects under the 7-cent fare as compared with the service rendered under the 5-cent fare. We find that in comparison with the performance of the Municipal Railway the company's service is distinctly inferior. The Municipal road renders its superior service at a 5-cent fare while the charge for this company's inferior service is forty per cent higher, at seven cents.

In its petition the company refers to the satisfactory service furnished to San Francisco's war production plants and to the Navy. We gave consideration and recognition in our decision to the company's efforts in that respect.⁴³ Commander Jenkins, who testified on the service to Naval establishments, also stated that he was concerned primarily with "keeping the Navy establishments going and we leave the establishment of service to the general public up to the other agencies that have jurisdiction over it."

The company's allegations in its petition that "by picking and choosing bits of evidence revealed in the company's

⁴³ Decision No. 36739 reads:

"No complaint can be made in regard to the company's service to establishments directly serving the war effort, such as shipyards and other war industries, and to Army and Navy concentration points. A letter of commendation from the Office of Defense Transportation is in evidence. Lieut. Commander Jenkins, U. S. N. R., Domestic Transportation Officer, 12th Naval District (former transportation research engineer of this Commission) testified that the company's service to Naval establishments has been satisfactory and that there has been cooperation with Navy headquarters. He stated that the Navy's transportation service requirements will greatly increase in the near future.

"We wish to put on record our conviction that all service requirements in furtherance of the war effort must have primary consideration of this company, as of all other utilities under our jurisdiction. Within the limits of our authority we are making, and shall continue to make, every effort to cooperate with the Army and Navy and with the appropriate federal agencies towards that end."

records of expenses incurred for the maintenance of its equipment and tracks, the Commission purports to find proof that the company has been derelict in its service duty" and that "neither the data referred to by the Commission in its opinion nor the testimony of the witness with respect thereto justifies the Commission's conclusion" are altogether unwarranted and the record is conclusive that the company has been and now is derelict in its service duty.

The petition refers to Section 13 of the Public Utilities Act 44 and alleges that we have acted without substantial or any evidence upon facts essential to accepted standards of the rate-making process. The record in this case is conclusive, and our decision, we think, sets forth in sufficient detail that the service, the equipment and the facilities of the company are not conducive to the promotion of the safety, health, comfort and convenience of its patrons, employees and the public, and are not adequate, efficient, just and reasonable. This has been true for a number of years past, and remains true at the present time. In this connection the petition alleges that no study was presented to indicate the probable financial results of the company's operation for the year 1943, or for any time in the future. The petition, and company counsel's argument as well, dwell at length upon the allegation that the Commission made its own assumptions of the traffic, the revenue, the expenses and net return for 1943, and for the future, on the various

44 Section 13 of the Public Utilities Act reads:

"(a) All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

"(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

"(c) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

rates of fare; viz., five cents, six cents and seven cents. The company's position as to what the Commission may do with the record before it in the exercise of its discretion and judgment was stated by counsel in his argument. (Tr: 403 et seq.) The Commission, according to counsel, can make arithmetical computations, but it cannot reach a deduction or conclusion that earnings or traffic or expenses for the entire year will be proportionate or disproportionate to the experience of a substantial portion of such year, or will be greater or smaller than in the preceding year, even though there be evidence of definite trends and extended actual experience. We cannot accept the company's limitations thus set upon the functions and duties of the Commission in a proceeding of this nature. In our consideration of testimony we are not confined to the operation of an adding or computing machine, nor does the law or common sense prevent our exercise of reasonable judgment on the basis of an entire and voluminous record. In rate cases, particularly when the proceeding is held open for further study and action, the Commission has on numerous occasions in the past established tentative rates subject to readjustment as the results of experience may require. This practice was followed in the 1937 and 1938 rate applications of this company, when several interim rates were ordered and put into effect, although the company had asked for different fares, and testimony had not been introduced on the specific fares ordered by the Commission.

This point came before the United States Supreme Court in *Clark's Ferry Bridge Company against Public Service Commission of Pennsylvania*, decided on February 5, 1934 (291 U. S. 227). That case involved the validity of an order of the Pennsylvania Commission reducing the rates of Clark's Ferry Bridge Company. That order, in part, prescribed "(1) A rate of 8 cents cash toll for all ordinary passenger automobiles and wagons now paying 10 cents". The order also provided, "That said Company file with this Commission monthly statements of income and operating expenses, showing the number of vehicles passing over its bridge in each class of traffic as contained in its tariff". One of the bases upon which it was claimed by the bridge company that the order of the Pennsylvania Commission

was unlawful was that the Commission undertook to forecast into the future what the traffic was going to be and that there were uncertainties and speculative elements in any such future estimate. Upon that matter Mr. Chief Justice Hughes said at page 241:

"The final attack is on the form of the Commission's order. The Commission fixed the amount of the annual gross revenue and then prescribed a tentative schedule of rates. Appellant says that it is obvious that no one can tell in advance how many vehicles of different tariff classifications will pass over the bridge in a year and what annual gross revenue will be produced by a given schedule of rates. But, as the prescribed rates are expressly stated to be tentative, there is no ground for assuming that the Commission will reject an application to make such changes in the schedule as experience may show to be necessary in order to produce the stipulated revenue. There is nothing in the order which requires that the test period should be a year or any definite time. From the statements at the bar it appears that appellant has not put the tentative schedule in effect and has made no application to the Commission for a change in the schedule. If the allowance of gross revenue is inadequate, as it has been found to be, there is no basis for complaint because of a schedule of rates which on application may be appropriately modified." (Emphasis supplied.)

The allegation that operating and financial results were in evidence only up to and including the month of March 1943 is incorrect. The stipulation entered into on the first day of the hearing, May 10, 1943, placed into the record the company's own monthly operating reports "from 1938 to date." (Tr. 19, 20.) Incorrect also and misleading is the allegation in the petition that the Commission's engineer did not testify to the financial effect of the 1938 rate increases. The record on that point in the transcript, pages 17 and 18, is as follows:

"Commissioner Sachse: Mr. Hunter, while you are back on again now I would like to ask you one or two

questions. Taking sheet 1 of this exhibit and also at the same time, if you can, look at page 8. Is my conclusion correct that, after the fare increase in 1937 to the Market Street Railway the net revenue or operating income, notwithstanding the fare increase, disappears completely for the year 1938?

A. That is correct.

Q. In other words, before the fare increase in 1937 the operating income of the Company was \$305,577; in 1938 after the fare increase, there was no operating income, but a deficit of \$40,234?

A. That is correct.

Q. Then in the succeeding years, 1939, 1940, and 1941 the Company never recovered from these fare increases to even the lowest income, the lowest operating income, which was in 1937; in no year after the fare increase did the operating income reach again the operating income prior to the fare increase, with the exception of the year 1942?

A. That is correct.

Q. In other words, am I correct in concluding that the loss in passengers, in fare passengers, was so great up to 1942 that the fare increase was not able to overcome the loss in those passengers?

A. That is the way the results turned out.

Q. And, of course, in 1942, that being a war year, that situation changed?

A. Correct."

Mr. Hunter also testified to the "high riding habit" and the "average short haul", factors which make San Francisco an outstanding streetcar riding community. These factors assure a greater volume of business and revenue if the rate is reduced.

The Commission has based its conclusions on the operating and financial results of the fare increases and not on mere theory. The record shows the company's actual experience and we can see no reason why we should substitute mere theory when we have before us the uncontradicted facts.

Decision No. 36739 does not confiscate the company's property

The company alleges in the petition for rehearing that the sum of \$7,950,000 does not represent the fair value of the company's operative property and cannot be used for rate-making purposes. Also, that a 6-cent fare will not produce a net operating income of about \$500,000, or approximately six per cent on the base figure of \$7,950,000 as found by the Commission.

We desire to discuss both allegations in some detail. The methods of determining a lawful and fair rate base by a regulating commission in cases of this nature has repeatedly been defined by the United States Supreme Court, and the principles we must follow to find fair value for rate-making purposes are not obscure. The rule we have applied in the decision in this proceeding was laid down by the United States Supreme Court in *Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California* (289 U. S. 287). Mr. Chief Justice Hughes delivered the opinion of the court and said at page 305:

"As the property remains in the ownership of the complainant, the question is whether the complainant has been deprived of a fair return for the service rendered to the public in the use of the property. This Court has repeatedly held that the basis of calculation is the fair value of the property, that is, that what the complainant is entitled to demand, in order that it may have 'just compensation', is 'a fair return upon the reasonable value of the property at the time it is being used for the public'. (Footnote citing cases.) In determining that basis, the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available. The property is not ordinarily the subject of barter and sale and, when rates themselves are in dispute, earnings produced by rates do not afford a standard for decision. The value of the property, or rate base, must be determined under these inescapable limitations. And mindful of its distinctive function in the enforcement of constitutional rights, the

Court has refused to be bound by any artificial rule or formula which changed conditions might upset. We have said that the judicial ascertainment of value for the purpose of deciding whether rates are confiscatory 'is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts'." Citing cases. (Emphasis supplied.)

In the present case the property has recently twice been the subject of barter and was offered for sale, and its market value, or what is called exchange value, is available. The ascertainment of the present market or exchange value appears to have been exceptionally competent and authoritative. It was not based on opinion, testimony, or expert appraisal, but was made by the company's management and directors after extended studies and negotiations. The offer twice made, to sell all the operative property at the price of \$7,950,000 was made, we must assume, in good faith since it was officially submitted to the City and County of San Francisco.⁴⁵

⁴⁵ The minutes of the company's directors' meeting of September 24, 1942, as shown in the transcript (p. 102) read in part as follows:

"Sale of the operative properties of Market Street Railway Company to the City and County of San Francisco. The President advised the Board that he has agreed with the Mayor and other City Officials, as well as the Board of Supervisors, to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash, and that a charter amendment for the purpose of raising such sum by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at the next general election on November 3, 1942. The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company.

"Whereupon, on motion of Director Scott, duly seconded by Director Lilienthal, the following resolution was adopted:

"Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco

An election was held, as agreed between the City and the Company, and the proposition to purchase the property at the price named failed to receive the required vote. That outcome, however, can have no bearing on the company's own measure of the market value of its own property. The deduction might be drawn that the price was higher than the majority of the voters were willing to pay.

In his argument on the value of the company's property, Mr. Smith points to the established rule that a utility valuation in a rate case cannot be based upon the capitalization of earnings, and he implies that the \$7,950,000 figure was reached by that method. There is nothing in the record to indicate or suggest such a basis of valuation. The minutes of the directors' meeting, referred to above, clearly show how the market value was reached: "The President stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company." The board of directors, as has been shown, confirmed the judgment and conclusion of the company's president.

The petition for rehearing purports to reveal the steps by which we arrived at the conclusion that six cents is a reasonable fare. The recital of these alleged steps amounts to a complete misstatement of the plain language of our decision and the computations based upon such misstatements must necessarily lead to altogether erroneous and absurd numerical results. Such false results, in dollars of revenue, expense and not operating revenue, are shown in the petition and in greater detail in a series of four tables submitted by counsel to the Commission in the course of his argument. The company's misleading computations are

for the sum of \$7,950,000 cash be, and the same hereby are, ratified, approved and confirmed; and it is

"Further resolved, that the Officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000 cash."

ostensibly based on the findings contained in our decision, when as a matter of fact the plain language of that decision clearly substantiates our conclusion that a 6-cent fare, with reasonably efficient operation and service, will meet all operating expenses and in addition produce a return of approximately 6 per cent on the base figure of \$7,950,000.

The company first (on page 7 of the petition) refers to the operating results for 1942, apparently taken from the table on page 24 of our decision. There is no dispute as to the correctness of the figures for that year, including the net return figure of \$1,069,914. These figures, it is to be remembered, are from the company's own 1942 income statement furnished the Commission in the regular sworn annual report. The petition then continues with the following allegation:

"The Commission concedes that \$250,000 more should have been charged for depreciation, reducing the actual net revenue to \$819,914. From this return the Company had to meet the interest and sinking fund requirements on its bonds, as the Commission previously had authorized it to do when approving its bond covenants, and had to meet also interest and retirement obligations on its unfunded debts that had accumulated from operating losses during earlier years."

This allegation is incorrect. The depreciation practices of the company are in evidence in this record in great detail. Consecutively for eight years prior to and including 1942 the company voluntarily charged \$500,000 annually to depreciation and each year's net income is stated on that basis. There is no reason why the company's depreciation accounting should be changed by us for the year 1942 any more than for any other year. The fact that the company paid its interest and sinking fund charges in part out of its depreciation reserve, instead of making necessary replacements of depreciated equipment, is not relevant at this point.

Next, the petition complains of our estimate on the results of operations for the year 1943 under the 7-cent fare, with reference to traffic, revenue, expenses, and net return. The complaint is that we considered the actual operating figures

for eight months of the year and that we made assumptions for the remaining four months. On that account our conclusion that with the 7-cent fare continued in effect and with the quantities of service continuing and the number of cars operating as theretofore, the gross revenue for the full year 1943 would be \$8,700,000, the expenses \$7,940,000 and the net return \$760,000, and the rate of return 9.6 per cent is alleged to be erroneous and contrary to due process. We have stated above the basis of our conclusions. It would be very simple to meet the test of fairness suggested by company counsel in his argument on rehearing⁴⁶ if our 1943 estimates were checked against the actual operating performance according to the company's own records and filed with this Commission under our order in this continuing rate proceeding. Counsel refused, however, to stipulate to such a check and in order to avoid a possible technical pitfall in the law on evidence we will not argue this point. We are confident the Commission kept within the limits of its discretionary judgment in concluding that the remaining months of 1943, with no change of fare and no material change in service, would follow the established trend as evidenced in the record.

The petition next purports to show the "assumptions" made by us as to the results of the operation for the year 1943, "and presumably for the future," under a 5-cent fare. The petition says "It is found that such a fare would produce a net loss of \$1,153,000 per year." The petition ignores the qualified and all-important language in our decision "without any allowance whatever for increased traffic."⁴⁷

⁴⁶ Mr. Smith said (Tr. 346): "Now, this matter of procedural due process of law is a very simple matter. Lawyers often use, though, many complicated words to express simple things. What we mean is fair play."

⁴⁷ The decision, page 31, reads as follows:

"The fixing of a five-cent fare on a twelve months' basis, *without any allowance whatever for increased traffic*, and including in operating expenses \$500,000 for depreciation, would result in a deficit of about \$1,153,000. On the basis of the record the indications are that with a five cent fare a 25% to 30% increase in traffic would be required to produce an income, after allowing for increased operating costs, to meet all expenses, including depreciation and taxes, and leave the company with approximately 5% return on the \$7,950,000

The net loss of \$1,153,000 per year, without considering the qualifying language in the decision, is obviously a mere mathematical calculation and reached by applying a 5-cent fare to the identical number of 7-cent fare passengers, i.e., a reduction of two cents for each of the 7-cent fare passengers. On this basis the petition concludes: "Hence, having found that the net profit of \$760,000 expected at a seven-cent fare would be converted into a net loss of \$1,153,000 if a five-cent fare were in effect, the sum of these figures, or \$1,913,000, is the amount of the expected reduction in gross revenue." The Commission, it must be clear, made no such assumptions and reached no such conclusions.

The petition, continuing on its erroneous basis, then presumes to explain "The last step taken by the Commission as to the effect of the application of a six-cent fare." Decision No. 36739, page 32, reads as follows:

"We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions."

The company in its petition, however, comes to a different conclusion. It says "If a reduction of 2 cents in the Com-

base figure. Such a result, with efficient management and the proper use of all available equipment and plant, might reasonably be brought about. An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area." (Emphasis supplied.)

pany's existing seven-cent fare would result in a gross revenue decrease of \$1,913,000, as the Commission estimates, it is evident that a reduction of one cent would operate to reduce gross revenue by fully one half that amount, for there could not be a greater stimulation of traffic at a six-cent fare than at a five-cent fare." Above it was shown that in its allegation of what the five-cent fare would accomplish, the Commission's qualifying language as to what a reasonable increase in traffic would do had been entirely ignored by the company and no allowance whatever for increased traffic was made in the company's estimate of \$1,913,000 reduction in gross revenue. In its estimate for the 6-cent fare, and coming to the conclusion that a deficit of at least \$256,500 would be suffered, the petition reasons that "there could not be a greater stimulation of traffic at a 6-cent fare than at a 5-cent fare." Having made *no allowance for any stimulation of traffic at a 5-cent fare*, the company follows the same erroneous assumption as to the 6-cent fare.

A casual inspection of decision No. 36739 shows that the Commission concluded with the 6-cent fare under reasonably satisfactory and adequate service, and with the operation of adequate available equipment, the next 12-months' annual gross revenue would be \$8,500,000 as compared with the 1943 revenue under the 7-cent fare of \$8,700,000, a reduction of \$200,000. For the future 12-months' period under the 6-cent fare the Commission made its allowance of \$8,000,000 of operating expenses compared with the 1943 operating expenses under the 7-cent fare of \$7,940,000, an increased allowance for operating expenses of \$60,000. Deducting the operating expenses from the operating revenue, under the future 6-cent fare, leaves a 12-month net operating income of \$500,000, which we concluded would be the approximate amount available for return, corresponding to a rate of return of about 6 per cent on the base figure of \$7,950,000. Such a rate of return, we concluded, would be more than adequate under existing conditions.

Conclusion.

The Supreme Court of the United States has just rendered another decision which supports our views of the

policy and methods we have followed throughout these proceedings. We refer to the case of *Federal Power Commission v. Hope Natural Gas Company*, decided by the United States Supreme Court as recently as January 3, 1944. This case involved the legality of an order of the Federal Power Commission reducing the rates charged for natural gas by Hope Natural Gas Company. It is unnecessary here to discuss that case at length. We do desire, however, to quote portions of that decision which are particularly pertinent here. In upholding the order of the Federal Power Commission Mr. Justice Douglas, in stating the opinion of the Court, says:

“When we sustained the constitutionality of the Natural Gas Act in the *Natural Gas Pipeline Co.* case, we stated that the ‘authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the States under the Fourteenth to regulate the prices of commodities in intrastate commerce.’ 315 U. S. p. 582. Rate-making is indeed but one species of price-fixing. *Munn v. Illinois*, 94 U. S. 113, 134. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. *But the fact that the value is reduced does not mean that the regulation is invalid.* *Block v. Hirsh*, 256 U. S. 135, 155-57; *Nebbia v. New York*, 291 U. S. 502, 523-539 and cases cited. *It does, however, indicate that ‘fair value’ is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon ‘fair value’ when the value of the going enterprise depends on earnings under whatever rates may be anticipated.”* (Footnote 9 omitted.) (Emphasis supplied.)

In the case before us the market or exchange value of the company's operative property was not reduced by any lower rates prescribed by this Commission. On the contrary, the Commission in the 1937-1938 proceedings hereto-

fore referred to substantially increased the company's rates. That increase, by stages from five to seven cents, finally amounted to a raise of 40 per cent. Notwithstanding the increase the company's net revenues fell below the previous net revenue from the 5-cent fare in each of the subsequent years 1938, 1939, 1940 and 1941 when the higher fare was in effect. The record is conclusive that the value of the company's property declined because of the operation of economic forces and, particularly, by reason of the effective competition of the Municipal Railway which furnished a better service at the lower rate.

The decision of the United States Supreme Court in the case referred to continues:

"We held in *Federal Power Commission v. Natural Gas Pipeline Co.*, *supra*, that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' *Id.*, p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. *Id.*, p. 586. Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. Cf. *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co. v. Commission* (No. 1) 294 U. S. 63, 70; *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). *It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and*

unreasonable in its consequences. Cf. *Railroad Commission v. Cumberland Tel. & T. Co.*, 212 U. S. 414; *Lindheimer v. Illinois Tel. Co.*, *supra*, pp. 164, 169; *Railroad Commission v. Pacific Gas & E. Co.*, 302 U. S. 388, 401." (Emphasis supplied.)

Later in the same opinion the Court says:

"It is suggested that the Commission has failed to perform its duty under the Act in that it has not allowed a return for gas production that will be enough to induce private enterprise to perform completely and efficiently its functions for the public. The Commission, however, was not oblivious of those matters. It considered them. It allowed, for example, delay rentals and exploration and development costs in operating expenses. No serious attempt has been made here to show that they are inadequate. *We certainly cannot say that they are, unless we are to substitute our opinions for the expert judgment of the administrators to whom Congress entrusted the decision. Moreover, if in light of experience they turn out to be inadequate for development of new sources of supply, the doors of the Commission are open for increased allowances. This is not an order for all time. The Act contains machinery for obtaining rate adjustments.*" (Emphasis supplied.)

This latest decision of the Supreme Court of the United States, we are confident, supports our decision No. 36739 in these proceedings. We have found that a 6-cent fare for Market Street Railway Company is just and reasonable and that any fare in excess of six cents is unjust and unreasonable. If, in the light of experience, the 6-cent fare should prove to be unreasonable under all the circumstances present in the operation of the company's street railway system, the Public Utilities Act contains the machinery for obtaining rate adjustments.

Our decision makes provision for the filing of monthly operating and service reports and we shall keep ourselves continuously informed of the traffic and revenue results

from the 6-cent fare and also of all other pertinent operating and service facts. If, in the light of the actual experience, it appears that the fare should be changed we shall, on our own initiative, take appropriate action.

We conclude that the petition of Market Street Railway Company for rehearing of decision No. 36739 should be denied.

Order Denying Rehearing

Market Street Railway Company having filed a petition for a rehearing of decision No 36739 in the above proceeding, the Commission having granted and heard oral argument on said petition, and being of the opinion that rehearing should be denied, It Is Ordered as follows:

1. That the petition of Market Street Railway Company for a rehearing of decision No. 36739 be and it is hereby denied.

2. That the effective date of decision No. 36739 be and it is hereby extended to February 11, 1944.

Dated at San Francisco, California, January 12, 1944.

RICHARD SACHSE,
FRANK R. HAVENNER,
FRANK W. CLARK,
Commissioners.

Certified as a true copy. R. J. Pajalich, Asst. Secretary,
Railroad Commission of the State of California. (Seal.)

EXHIBIT 3

Filed Jul 1, 1944. A. V. Haskell, Clerk. By — — —,
S. F. Deputy; S. F. No. 16988.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN
BANK

MARKET STREET RAILWAY COMPANY, Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and
Frank R. Havenner, C. C. Baker, Justus F. Craemer,
Richard Sachsé and Frank W. Clark, the members of
and constituting The Railroad Commission of the State
of California, Respondents.

The Railroad Commission on its own motion ordered an investigation into the reasonableness of the rates and the sufficiency and adequacy of the service rendered by Market Street Railway Company in San Francisco. After hearings the commission filed its opinion and order reducing the rate of base cash fare for transportation of passengers in the city from seven to six cents. The company petitioned for a rehearing which was denied. The matter is here on its petition for a review pursuant to section 67 of the Public Utilities Act.

The petitioner attacks the proceedings and order as a deprivation of orderly due process, and as a confiscation of its property.

I

On the first, the procedural question, the company claims that it was denied due process by a failure of notice that it was being charged with the maintenance of unreasonable rates; that the issue of unreasonableness of rates was not framed during the course of the hearing; that the commission introduced no evidence of unreasonableness of the prevailing rate, and that the company was not afforded an opportunity to present evidence on the issue.

The petitioner does not claim that it did not receive a copy of the "Order Instituting Investigation", which was

mailed to it. That order notified the company that "the commission, believing that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company", would institute an investigation upon its own motion "into the reasonableness of the rates, charges, classifications, rules and regulations" of the company, "and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company." The 10th day of May, 1943, was set as the time for the commencement of the public hearings. Notice of the time of hearing was also sent to other public utilities, and public and civic bodies and officers, including the California Street Cable Railroad Co., the Mayor and the Board of Supervisors of the City and County of San Francisco, the Department of Public Works, the Board of Public Utilities, the City Attorney, the San Francisco Chamber of Commerce, the Office of Defense Transportation, and others. Hearings were conducted on May 10, July 15, and September 15, 1943. Thirty-three exhibits were introduced, consisting of reports and documents bearing on income and revenues, studies and reports of value, analyses of profit and loss accounts, operative expenses, statistical studies in passenger revenue and car and bus hours, as well as studies in operative equipment, traffic checks, results of operation, charges and revisions in operative practices, and comparative rate and operation analyses of Market Street Railway and the Municipal Railway of San Francisco. Certain voluminous annual and monthly reports in addition were by stipulation deemed to be before the commission. The oral evidence is contained in three volumes of transcribed testimony. Witnesses were produced by the commission, by the city and by the company. J. G. Hunter, produced by the commission, the first witness to testify, gave a resume of the matters for investigation, which included "operating expenses, taxes, depreciation, studies on rate base figures, the estimated operating results that would obtain under different fare structures." Comparative balance sheets, charges and reports were introduced dealing with these subjects. Comparisons were

made between appraisals based on book value and on historical cost. Testimony on the state of the physical properties, on employment conditions, on available manpower, on adequacy of the service and facilities, on the possibility of interchange of facilities and a universal transfer system, on the company's franchise obligations in roadbed upkeep, and on elements to be considered in evaluating service, was also received. Mr. Samuel Kahn, who is president and general manager of the company and an engineer and expert in utility management, and Mr. Leonard V. Newton, vice-president of the company and engineer in charge of operations, testified on behalf of the company. On direct and cross-examination Mr. Kahn testified and presented exhibits illustrating his opinion of the effect of various rate structures. Mr. Newton's testimony was confined mainly to operations and employment conditions.

Thus, the company had the required notice of hearing on the question of reasonableness of the rates and full opportunity at the hearings to present any further evidence on the rate issue, had it chosen to do so. The notice and the course of the hearings were adequate to inform the company that the reasonableness of the present rate was under investigation. The discussion on this phase of the review may be concluded by stating that the various studies, reports and other statistical data, including the record in prior rate proceedings, together with the exhaustive investigation into the present state of the properties and the adequacy and value of the service, must be deemed to have had a direct bearing on the rate issue. The fact that the financial and rate base studies were required to be produced by the commission as a part of the record was sufficient to give to the company ample warning that the commission was seriously proceeding into an investigation of the reasonableness of the existing rate. In fact Mr. Kahn's testimony clearly indicated that he so understood the purpose of the inquiry. The statement of counsel that the elements of fair play were so lacking in the proceedings as to call for a conclusion that orderly due process was not observed is not supported by the record. The company had the opportunity to supplement or explain the reports and data

introduced in evidence. The commission also accorded the opportunity for argument on the petition for rehearing, but no supplement or explanation of the submitted data was referred to on the argument on rehearing. At that time the petitioner merely contended that a rehearing should be granted in order to conduct further studies on the estimates of future revenues, expenses and net return under various rates, as well as valuation studies to supply evidence of different rate bases, including reproduction cost, different from those on which the commission placed its estimate of a fair return from operations under the reduced rate. Under these circumstances the comment of the court in *Railroad Commission of California v. Pacific Gas & Elec. Co.*, 302 U. S. 388, at page 393, is appropriate here: "As we have seen, the respondent [petitioner] was heard, the Commission received the testimony of respondent's witnesses, its exhibits and argument. There is nothing whatever to show that the hearing was not conducted fairly." The petitioner's further demands are more properly addressed to the matter of reasonableness in relation to due process when we come to consider the second phase of this review, namely, the issue of confiscation.

II

The opinion of the commission gives the essential background. The year 1852 saw the first omnibus service in San Francisco; 1860 the first street railway; and 1873 the first cable line. The cable was more suited to the hilly terrain and some of the horsecar lines were converted to the cable method of operation. In 1893 Market Street Railway Company was incorporated and took over eleven of seventeen independent street car lines.

By city charter amendments ratified by the electors in 1902, provisions were enacted for municipal acquisition of public utilities. (Stats. 1903, pp. 586 et seq.) Privately owned street railways were permitted to hold franchises for not to exceed 25 years, whereupon tracks and overhead construction should revert to the city without cost.

In 1902 United Railroads of San Francisco was incorporated. It succeeded to the properties of Market Street

Railway Company and five additional lines. The earthquake and fire of 1906 caused heavy losses and a large reconstruction program ensued.

In 1912 the first municipal line was placed in operation. Municipal railway expansion proceeded rapidly in order to serve the traffic during the Panama Pacific International Exposition in 1915. The city built lines of extension parallel with some of the Market Street Railway lines.

United Railroads became unable to pay the interest on its bonded indebtedness and in 1921 its properties were acquired by the bondholders under foreclosure sale and were in turn sold to Market Street Railway Company. The 25 year franchise limitation was not enforced: Pursuant to section 131 of the city charter (Stats. 1931, p. 3052), the company surrendered its franchises and was granted a 25 year permit to continue operations subject to the right of the city to acquire the properties upon paying the fair value of the operative properties exclusive of going concern value or other intangible elements. In 1925 the company began placing motor buses in operation and by December 1942 it had 125 buses in service.

The competitive factor induced by the continuing expansion of the municipal railway system became a constantly increasing threat to the operational and financial integrity of the company. The Market Street Railway Company came under the jurisdiction of the Railroad Commission, while the municipal lines remained subject to the regulation and supervision of the city. The municipality retained a five cent fare even though the system was operated with a deficit. Market Street Railway's original franchises included a five-cent fare clause.

In 1937 Market Street Railway applied to the Railroad Commission for an increase of the fare to seven cents. The application was granted to the extent of permitting a two-cent transfer charge. At that time the company was admittedly not seeking the increase on the basis of a fair return on its investment, but sought merely to meet \$1,000,000 additional annual operating expense due to increased taxes and labor costs. (Dec. #29889, 40 C. R. C. 525.) In its opinion in that proceeding the commission said: "It is

clear from this record that operation under any reasonable fare structure will not in the near future yield a revenue sufficient to provide a full return on any reasonable rate base of applicant's property, so long as the competing Municipal lines are operating on a 5-cent fare. For that reason this record does not deal with the matter of establishing a rate base for this property. In fact, the only reference to valuation in this record is that which is contained in the application to the effect that a valuation made [in a report filed with the supervisors in 1929] by the late M. M. O'Shaughnessy, former City Engineer of San Francisco, shows that the present fair value of applicants property is at least \$24,000,000." Its decision (*ibid*, p. 532) discloses that the president of the company was of the opinion "that experience alone could tell what results would obtain if the proposed fare structures were put into effect."

In 1938 the company made a supplemental application for an increase to a seven-cent fare on a showing that revenues had declined and that further increased operating expenses were imminent due to higher labor costs. The commission granted the application to the extent of permitting a seven cent fare, four tokens for 25 cents. Again the commission noted that the company was not seeking the new rate on the basis of a fair return on its investment. (Dec. #30849, 41 C. R. C. 349, 351.)

The City of San Francisco granted franchises to bus companies for operation on a ten cent fare in direct competition with the company, but refrained from granting any such franchises which would compete with the municipal lines. The company attempted to effect economies by installing one-man operation in its electrically operated cars, but that practice was discontinued when the Federal Courts upheld a San Francisco city ordinance forbidding one-man operation of street cars. (*San Francisco v. Market Street Railway Co.*, 98 Fed. 2d 628, 305 U. S. 657; 306 U. S. 667.) The company had attempted to abandon unprofitable lines, but had been unable to obtain permission from the city to do so:

Consequently in the same year (1938) the company made a second supplemental application for a straight seven cent

basic fare. The showing was that as a result of the increase in fares in a twelve month period more than 10,000,000 passengers had been diverted to the municipal lines, and the company was operating at a loss. San Francisco is a city with what is termed a "high riding habit" and a large percentage of the lost traffic consisted of short-haul riders who declined to pay the seven cent fare. In that proceeding the commission concluded that the company was entitled to relief to prevent a collapse or partial collapse of its service, and, accepting the company's estimate that revenues could be increased only by a straight seven cent fare, it granted the petition conditionally. It required the company forthwith to petition the board of supervisors of the city for permission to abandon operation on specified lines and for such form of relief as might be necessary to eliminate "jitney" competition. The company complied with the requirements and on December 12, 1938, the board of supervisors denied the requests. Thereupon, on December 27, 1938, the commission ordered the new schedule based on a straight seven cent fare effective January 1, 1939.

The straight seven cent basic fare has continued until the present time. The hoped for results, however, did not immediately materialize, even with the stimulation afforded by the holding of the Golden Gate International Exposition in 1939-1940. Compared with the year 1936, the last year under the five cent fare, the 1941 traffic and revenue reached the lowest ebb, showing a falling off of 64,056,000, or 42 per cent, in revenue passengers, and \$1,426,282, or 19 per cent, in passenger revenue. The figures show a decline of 39 per cent in revenue as compared to the maximum revenue year of 1925. The state of the operative properties and the adequacy of the service continued to decline. The company became unable to discharge its franchise obligations for roadbed maintenance and the city was attempting to collect \$1,691,162.76 claimed as arrears.

After the entry of this country into the present world war in 1941, and upon the stepped-up production of war materials, an abnormal increase in traffic occurred result-

ing in increased revenue, accompanied, however, by a further marked deterioration in the operative properties and in the service to the public.

The commission examined the condition of the properties and the adequacy of the service in relation to the prevailing rates for transportation. It found evidence of long-time neglect, deterioration, mismanagement, indifference to urgent public need, and other causes productive of poor service, not all of which were chargeable to the war. The company refused to lease idle equipment to the municipality although the latter had sought to put it into service on its own lines after the Office of Defense Transportation had denied it priority rights for new equipment because of the existing condition of idleness of rolling stock in San Francisco, none of which was attributable to the city. The company was unsuccessful in retaining or drawing its share of the available manpower, which was being diverted to the Municipal Railway. Undeniably there is evidence of "deplorable condition of track, of deferred maintenance, unfulfilled street paving obligations, obsolescence of street car equipment, and the failure of the company to replace, during pre-war years, uneconomical and outdated facilities by modern, more efficient, and more profitable means of mass transportation", conditions which had grown progressively worse over a period of years antedating the commencement of the war. Service, with the exception of that to establishments directly engaged in the war effort, such as shipyards and army and navy concentration points, steadily declined in quality and adequacy. The commission stated that an analysis of the company's finances showed that over a period of years the company had diverted to payment of indebtedness funds urgently required for proper maintenance and for the replacement of depreciated property.

The record makes it apparent, and the commission recognized, that in the past competition was the factor which prevented the company from reaping financial benefit from any rate structure; that heretofore the private automobile has given the railways competition; that that source of competition is partially eliminated during the period of

rubber and gasoline shortage; that the increased traffic due to war activities will not last, and that as soon as transportation conditions return to normal the company will again be handicapped by a seven cent fare against the competition of the Municipal Railway and the automobile; and that under any rate structure the condition of the company will grow even worse than at the former low level unless the service is greatly improved. It is also disclosed that while prior to the war the five cent fare produced a greater gross and net annual revenue than any fare in excess of five cents, a five cent fare structure will not realize any net return to the company under a competitive system of operation.

Compared with Market Street Railway, the Municipal Railway under a five cent fare has gained in quality of service and equipment, and in financial returns. As with Market Street Railway, however, the Municipal Railway's increase in financial returns began with the abnormal increase in traffic.

Attempts had been made to have the city of San Francisco acquire the Market Street Railway. Transportation surveys and property appraisals had been prepared and negotiations carried on over a long period of years. At the general election of November 3, 1942, the electorate of San Francisco rejected a proposed revenue bond issue to raise \$7,950,000, the price theretofore settled upon at which the company would sell its properties to the city. A similar proposition at the same figure was again submitted and again rejected at a special election held April 20, 1943.⁴⁸

The commission rejected the company's book figures of cost and depreciation and selected the offered price, \$7,950,000, as the value of the utility and rate base for the purpose of computing the return to the company under various rate structures. It concluded that operation under a six cent fare, after deduction from gross passenger revenue of operating expenses, depreciation and taxes, would pro-

⁴⁸ Since this review proceeding was commenced and on April 16, 1944, the electorate of the city voted favorably on a proposition to acquire the operative properties of the company on a self-liquidating plan for \$7,500,000.

duce a net return of slightly more than six per cent on the rate base of \$7,950,000. It computed that a seven cent fare, allowing an increase in operating expenses to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes, would yield annual net operating revenues of \$760,000, a return of 9.6 per cent on the rate base. Figuring the return from a seven cent fare on a depreciation allowance of \$500,000, which is the amount the company had been charging off annually, the percentage would be 12.7. The commission found both these rates of return excessive and unjustified by the present service. Its computation under a five cent fare, with a depreciation allowance of \$500,000, indicated a deficit of \$1,153,000. On a six cent basic fare it estimated annual gross revenue at \$8,500,000, operating expenses, depreciation and taxes at \$8,000,000, leaving a net operating income of \$500,000, slightly more than six per cent on the base figure of \$7,950,000, which return it found to be reasonable. It said that consideration of service alone and of the value of service to the patron would justify the fixing of a five cent fare; but it determined that a six cent fare was a just, fair and reasonable rate, provided every possible and reasonable effort promptly be made by the company to furnish an improved service, and that a fare in excess of six cents was unjust and unreasonable.

No contention is urged that a six per cent return on the investment is not adequate, under present conditions, to attract capital and keep a utility in a solvent condition. The question is whether the record clearly establishes that the selection of the figure of \$7,950,000 as the rate base will result in confiscation of the company's property.

The commission rejected all other figures and selected the offered price as that most truly representative of the value of the company's properties. It said that "the only available indication in this record of the present value of the company's properties used and useful in the public service is the resolution of the company's Board of Directors, passed on March 25, 1943. The resolution (Exhibit 9) reads as follows:

"Sale of the operative properties of the Market Street Railway Company to the City and County of San

Francisco. The President advised the Board that he had agreed with the Mayor and other city officials, as well as the Board of Supervisors, to sell the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash, which was the same amount agreed upon for the sale of the operative properties when a charter amendment for the purpose of raising such sum by a revenue bond issue was submitted to and rejected by the qualified electors of the City and County of San Francisco at the general election on November 3rd, 1942. The President stated further that a similar charter amendment, with several changes therein, for the purpose of raising the sum agreed upon for the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco by a revenue bond issue would be submitted to the qualified electors of the City and County of San Francisco at a special election to be held on April 20, 1943. The President also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor.

“Whereupon, on Motion of Director Fay, duly seconded by Director Scott, the following resolution was adopted.

“Resolved, that the actions of the President in negotiating the sale of and agreeing to sell the operative properties of the Market Street Railway Company to the City and County of San Francisco for the sum of \$7,950,000.00 cash be, and the same hereby are, ratified, approved and confirmed; and it is

“Further Resolved, that the officers of the Market Street Railway Company be and they are hereby authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of the Market Street Rail-

way to the City and County of San Francisco for the sum of \$7,950,000 cash."

The commission adopted the price stated in the offer as the "present fair market value", without the necessity of expressing an "opinion on the reasonableness of the figure of \$7,950,000 as an exact measure of the present fair value of the company's operative property in its present depreciated physical and service condition, with its past earning record and its prospective future under the competitive transportation situation obtaining in San Francisco." The petitioner contends that the ultimate figure adopted by the principals for the sale of the property to the city and therefore by the commission as the present fair market value was based on a capitalization of earnings; that the commission should have proceeded on a consideration of depreciated reproduction cost and historical cost, in accord with the holding of the Supreme Court of the United States in *Smyth v. Ames*, 169 U. S. 466, and other cases.

In *Smyth v. Ames*, after stating that the basis of all calculations as to the reasonableness of rates must be the fair value of the property being used for the convenience of the public, the Supreme Court proceeded to lay down the essential matters for consideration in ascertaining that value. (p. 546.) "And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Subsequent decisions emphasized the necessity for finding fair value by weighing all the elements prescribed in *Smyth v. Ames*. Notably in *Minnesota Rate Cases*, 230 U. S. 352, at 434, the Supreme Court said that there must be a "reasonable judgment having its basis in a proper consideration of all relevant facts", repeating the language quoted from *Smyth v. Ames*. The emphasis progressed to the extent that in many cases, if one factor or element, particularly that of reproduction cost new, had not received consideration in arriving at "present fair value", it was determined that the constitutional due process requirement had been violated. (*Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U. S. 276; *Bluefield etc. Co. v. Public Service Com.*, 262 U. S. 679; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400; *United Railways v. West*, 280 U. S. 234; cf. *Pacific Gas Co. v. San Francisco*, 265 U. S. 403; *Los Angeles Gas Co. v. Railroad Commission*, 289 U. S. 287; *Railroad Comm. of Calif. v. Pacific Gas & Elec. Co.*, 302 U. S. 388.) Thus due process was deemed not to have been observed if it was shown that the regulatory body, in evaluating the plant or operative properties for rate purposes, had not considered depreciated reproduction cost as well as book cost, actual (sometimes called original or historical) cost, capitalization, etc. Since calculations under each formula led to widely different results it became apparent that in *Smyth v. Ames* rule had provided itself unworkable. Criticisms of it are found in the dissenting and concurring opinions in *Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U. S. 276, 289; *Pacific Gas Co. v. San Francisco*, 265 U. S. 403, 416; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 421; *United Railways v. West*, 280 U. S. 234, 255; and *West v. C. & P. Tel. Co.*, 295 U. S. 662, 680. In the *Southwestern Bell Tel. Co.* case, Justice Brandeis (Justice Holmes concurring with him), disagreed with the majority view that the commission must consider reproduction cost new under the slogan "Estimates for tomorrow cannot ignore prices of today", and advocated the prudent investment theory.

In *Georgia Ry. v. R. R. Comm.*, 262 U. S. 625, decided less than three weeks later, Justice Brandeis writing the

majority opinion distinguished the Southwestern Bell Tel. Co. case. The court decided that the commission was not bound to slavish adherence to reproduction cost new in a case where the evidence showed that it gave consideration to that element, the dissenters seeking to apply the Southwestern Bell decision. On the same day the court also decided *Bluefield Water Works v. Public Service Comm.*, 262 U. S. 679, wherein reproduction costs had not received consideration and the court reversed, following the Southwestern Bell case, Justice Brandeis disagreeing with the grounds of reversal.

In the case of *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 408, the court required a further step, namely, that the future as well as the present must be regarded; that present value could not be determined without an honest and intelligent forecast as to probable price and wage levels, probable yield over operating expenses, etc., during a reasonable period in the immediate future.

In 1933 the Supreme Court obviously began to anticipate a departure from adherence to *Smyth v. Ames*. In the case of *Los Angeles Gas Co. v. Railroad Comm.*, 289 U. S. 287, the court in effect upheld the California commission which, in making a rate reduction order, had rejected reproduction cost figures as "too uncertain and hypothetical to enter into a rate base figure." The court relied on the Minnesota Rate Cases for the theory that the cost-of-reproduction method did not justify the acceptance of results which depended upon mere conjecture. It pointed out the necessity of distinguishing between the legislative and judicial functions; that it is the appropriate task of the commission to determine the value of the property affected by the rates it fixed, and that of the court, in deciding the question of confiscation, not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its total effect is to deny to the owner of the property a fair return for its use. It said: (p. 304) "We do not sit as a board of revision, but to enforce constitutional rights. *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 446. The legislative discretion implied in the rate making power necessarily extends to the

entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof and the Court may not interfere with the exercise of the State's authority unless confiscation is clearly established."

In April 1934, the Supreme Court upheld the commission's order prescribing rates for telephone service in the case of *Lindheimer v. Illinois Tel. Co.*, 292 U. S. 151. It rejected the company's claim that the rates were grossly confiscatory because not based on estimates of original or book cost and reproduction cost new; for, to recognize the claim, it stated, would be to sanction "a large increase over the rates which have enabled it to operate with outstanding success. Elaborate calculations which are at war with realities are of no avail."

West Ohio Gas Co. v. Commission, 294 U. S. 63 (January 1935), reiterated the restricted function of the court declared in *Los Angeles Gas Co. v. Railroad Comm. of California*, 289 U. S. 287, saying (p. 70), "Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern Ry. Co. v. Virginia*, 290 U. S. 190) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error."

Nevertheless, less than six months later, in *West v. C. & P. Telephone Co.*, 295 U. S. 662 (June 1935), the court affirmed a decree enjoining the commission from enforcing prescribed rates because of the method employed to ascertain

value, namely, by the use of price trend indices, rather than on the ground that the rate was confiscatory.

In April 1936, in *St. Joseph Stock Yards Co. v. U. S.*, 298 U. S. 38, 53, the majority of the court again reviewed the distinctive functions of commission and court, saying that the "judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence . . .

Judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency . . . We have said that 'in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing' . . .

The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the ratemaking power unless confiscation is clearly established"

In *Railroad Commission of California v. Pacific G. & E. Co.*, 302 U. S. 388, the court, reemphasizing the principle from *Los Angeles Gas Co. v. Railroad Commission*, *Lindheimer v. Illinois Tel. Co.*, *West Ohio Gas Co. v. Public Utilities Com.*, and other cases, refused to consider as an error amounting to a denial of due process the commission's treatment of the company's estimate of reproduction costs as without probative value. The dissenting opinion of Justice Butler, who invoked application of the *Smyth v. Ames* rule, pointed out that the California Commission consistently refused to apply the *Smyth v. Ames* criteria.

Then in *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575 (March 1942), the court again appeared to approve nonadherence to the rule of *Smyth v. Ames* by utility commissions. It upheld an interim order of rate reduction by the Federal Power Commission, acting under the Natural Gas Act of 1938, 52 Stat. 821, 15 U. S. C. Sec. 717, which required that rates and charges for transportation and sale of gas in interstate commerce should be "just and reasonable." The gas company sought to have

\$8,500,000 claimed going concern value included in the rate base. In upholding the commission the court said (p. 586): "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustment which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

Finally in *Federal Power Commission v. Hope Natural Gas Company*, decided January 3, 1944, the court freed commissions from the necessity of following *Smyth v. Ames*. There the commission reduced gas rates. In testing the value of the utility property, it had omitted an item of \$17,000,000 expended for drilling operations in an unregulated period of the utility's operations, and which in the same period had been recouped from earnings by having been charged off to operating expenses. The court rejected the contentions that the rate base should reflect the reproduction cost and trended original cost, and that the well drilling costs of \$17,000,000 should have been included in the rate base. It said: "Rate-making is indeed but one species of price-fixing. *Munn v. Illinois*, 94 U. S. 113, 134. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid . . . It does, however, indicate that 'fair value' is an end product of the process of rate-making not the starting point . . . The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated.

"We held in *Federal Power Commission v. Natural Gas Pipeline Co.*, supra, that the Commission was not bound to

the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' *Id.*, p. 586. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. *Id.*, p. 586. Under the statutory standard of 'just and reasonable' it is the result reached and not the method employed which is controlling. Cf. *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co. v. Commission (No. 1)*, 294 U. S. 63, 70; *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences . . . The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the Act as unjust and unreasonable from the investor or company viewpoint." Answering other contentions the court said: "Congress has entrusted the administration of the Act to the Commission not to the courts. Apart from the requirements of judicial review it is not for us to advise the Commission how to discharge its functions."

The petitioner contends that the cases of *Federal Power Commission v. Natural Gas Pipeline Co.* and *Federal Power Commission v. Hope Natural Gas Company* are inapplicable because they involved the commodity gas, as distinguished from the use of common carrier property. The petitioner

does not contend, however, that the rate base theory of public utility valuation is not applicable in the present case. That theory of evaluating public utility property as determinative of the question of confiscation was adopted by the commissions, and assumed by the court to be proper, in the cited cases. It follows that the holdings of the Supreme Court in those cases may be considered in a case involving common carriers. Therefore those cases, particularly the Supreme Court's decision in the Hope Natural Gas Company case, permits unreasonableness to be shown, not by the method employed to formulate a rate base, but by the fact that the "end result" of the commission's order interferes with the Company's successful operation, its financial integrity, its ability to maintain credit and attract capital, and to compensate investors for risks assumed—in short, fails to provide a return sufficient to induce the utility enterprise to "perform completely and efficiently its functions for the public." The Supreme Court refrained from endorsing a particular method of valuation to arrive at the result of reasonableness, but left commissions free to follow *Smyth v. Ames*, or to select one or more of the heretofore recognized criteria or a different method, which, even if irregular, would not invalidate an order unless unreasonableness were clearly established. Thus, responsibility for rate fixing, in so far as the law permits and requires, is placed with the commission, and unless its action is clearly shown to be confiscatory the courts will not interfere.

Section 32 of the Public Utilities Act (Stats. 1915 p. 115, as amended), empowers the California commission, after a hearing had upon its own motion or upon complaint, to make findings on the reasonableness of the rates charged by a public utility and to lower or increase the rates accordingly. By the same section the commission also has power and it is made its duty, after a hearing had on its own motion or on complaint, to determine the facilities and operation adequate to meet the public requirements, and to fix the just, reasonable and adequate rates for such service.

Section 67 of the Public Utilities Act provides for a review by this court for the purpose of having the lawfulness of the order and decision of the commission inquired into.

That section restricts the review to a determination of whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. It further provides that the findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as hereinafter noted, and that such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The exception to finality is that "in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the Commission material to the determination of said constitutional question shall not be final." That section also gives the court power to enter judgment either affirming or setting aside the order or decision of the commission.

That part of section 67 which requires the independent judgment of the court on the law and the facts and withholds from the commission's findings and conclusions finality on constitutional questions, was added by amendment in 1933. This court thereafter recognized that the amendment was responsive to language in certain United States Supreme Court decisions which indicated that the legislature must provide the means whereby the courts should exercise an independent judgment on the law and the facts when Federal constitutional questions were involved. (*Southern California Edison Co. v. Railroad Com.*, 6 Cal. 2d 737; *American Toll Bridge Co. v. Railroad Com.*, 12 Cal. 2d 184.) The United States Supreme Court and this court assumed to exercise such judgment without statutory language, deeming it appropriate for the protection of constitutional rights; but in the exercise thereof, as variously stated in the decisions, the reviewing court refrains from sitting as a board of revision; and will not disturb the findings or conclusions of the regulatory body unless inva-

sion of constitutional rights is clearly established. In the Edison Company case this court pointed out that the amendment added nothing which was not theretofore a part of our state law; that it did not materially affect the procedure theretofore followed in a review under the Public Utilities Act, and did not make the court a trier of disputed questions of fact already resolved by the commission. We said: (p. 748) "If the mere challenge on federal constitutional grounds was intended by the amendment of 1933 to be sufficient to take the case out of the rule that the findings and conclusions of the commission in such cases should be final and beyond review, then we would have grave doubt of the power of the legislature thus to transfer to this court the traditional functions of the commission." In *American Toll Bridge Co. v. Railroad Com.*, supra, it was again stated that the amendment did not change the scope of the judicial review.

In the present proceeding, as in the recent cases of *Federal Power Commission v. Natural Gas Pipeline Co.* and *Federal Power Commission v. Hope Natural Gas Co.*, the standard for rate fixing is that of reasonableness. The petitioner herein must be charged with the burden of showing that the evidence does not support the commission's finding of value, and that the reduced rate is unreasonable and will result in confiscation of its property. That burden is coupled with a strong presumption of the correctness of the findings and conclusions of the commission. Ordinarily a public utility is a monopoly and is not subject to the travail of competition. Because of its monopolistic character, public interest requires that it submit to regulation for the protection of the consumer, and the utility in return is entitled to protection of its investor interest. In the case of monopolistic utilities it is possible to say that regulation to accomplish the two-fold purpose may be a relatively simple matter. But here the commission was confronted with facts which are unusual in utility rate regulation. It was faced with the problem of evaluating the property of a utility which was in direct competition with a municipal utility offering similar service in the same community, in large part serving the same territory, and over which the

commission had no regulatory power. From the year 1912, when a competitive system of street car operation was established in San Francisco under municipal regulation, such obstacles to profitable operation by the commission regulated utility were created that commission regulation in effect gave way to regulation by competition. The evidence is clear that during the early competitive period and until the abnormal stimulation in public use brought about by the present world war, competition necessitated operation at a loss. Since the commencement of competition the company has not devoted to replacement and repair the amounts charged off on its books for those purposes, and its charges to depreciation reserve were lower than the actual annual plant consumption. In this connection it is significant that for tax purposes the company's accrued depreciation figure was shown to be \$26,834,000, and its total depreciation reserve figure only \$9,902,000. The factors which affected the value of the investment in this case justified the commission in refusing to follow the practice of adopting as an annual charge to plant consumption the company's book depreciation reserve or any other hypothetical sum approved by accounting practices. The evidence supports the conclusion that the company permitted unusual deterioration in view of negotiations for sale to the city started many years ago. The ordinary methods or theories of depreciation accounting therefore would not reflect the true record of the past annual plant consumption and the result, were such methods adopted, would not be in conformity with the facts. On the other hand, the evidence of obsolescence, depletion, depreciation and deterioration is such as to justify the commission's observation that there was no available or procurable evidence of the fair value of the property except the amount contained in the company's offer to sell to the city, made in the period when the business was profitable. Acceptance of the company's book figures or of the amount of outstanding capitalization, in order to arrive at the present worth of the properties, would result in a figure inflated so far above fair value as to impede the commission's authorized regulatory effort to restore the company as a useful public servant.

performing its functions adequately. Capitalization in any event has little relation to the depreciated value of the investment. Also going concern value can have little if any place in the rate base under the facts except as the special factor of competition has so affected that value as to indicate it at nil. Separate appraisal of the going concern element is not required. (*Federal Power Com. v. Natural Gas Pipeline Co.*, supra.)

It cannot be said that under the facts of this case arbitrary action resulted merely from the commission's rejection of book values and capitalization, its refusal to make precise estimates of actual deterioration, of going concern or other values, and its acceptance of the company's offer of sale to the city made in a profitable period as the best evidence of the fair value of the utility in the present condition of its operative properties. The commission expressly refrained from considering whether the amount of the offer in relation to value under all the conditions was not too high. Furthermore, it appears that studies of valuation for sale purposes were also made by the city and by the commission, and only after such studies was a sale price selected which was deemed commensurate with the fair value of the property under existing conditions.

It is the real and not the nominal paper valuation that determines the amount of the investment on which the utility is entitled to a return. (See *Pond, Public Utilities*, Fourth Ed., Vol. 2, pp. 1117, 1118.) As said in *Lindheimer v. Illinois Tel. Co.*, 292 U. S. 151, the "actual experience of the company is more convincing than tabulations of estimates Elaborate calculations which are at war with realities are of no avail." There is no fundamental or statutory law which will preclude the commission from evaluating a public utility in accordance with the actualities. So to proceed is not to take private property for public use without compensation. There is no denial of due process in rejecting conjectural and unsatisfactory estimates of value, or in treating the petitioner's estimates as without probative value. (*Railroad Com. of Calif. v. Pacific G. & E. Co.*, 302 U. S. 388, 397-398.) As was said in *Los Angeles Gas Co. v. Railroad Com.*, 289 U. S. 287,

306, "The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. The time and circumstances of the outlay, and the effect of altered conditions demand consideration."

The petitioner has not shown that the results are not in accord with the realities. Both before the commission and in this court it contented itself merely with urging that the commission proceeded erroneously in selecting for rate making purposes the offer price of \$7,950,000, because, so it claims, that figure was based on a capitalization of earnings. The petitioner made no offer or attempt to show that the value fixed by the Commission did not represent either the true depreciated legitimate cost or the true depreciated actual cost. In *Minnesota Rate Cases*, 230 U. S. 352, 566, it was said that "the company having assailed the constitutionality of the state acts and orders was bound to establish its case, and it was not entitled to rest on expressions of judgment when it had it in its power to present accurate data which would permit the court to draw the right conclusion." Since it is impossible to say in the light of the evidence in this proceeding that the figure selected by the commission does not bear a proper relation to the fair value of the utility under existing conditions, it must be concluded that the petitioner has not shown arbitrary action on the part of the commission in selecting the sale offer price as the rate base, or that the evidence does not support the commission's finding that the figure selected represents at least fair value, if not more than that.

The petitioner has also failed to meet the burden cast upon it to establish that the return on the rate base under the reduced fare will prevent the utility's functioning adequately from the company or investor standpoint. The commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenues, expenses, and other costs. This court will not disturb its findings on those disputed questions of fact. The company is now and for

several years has been doing an abnormally increased traffic business with returns greatly in excess of its operating costs plus increased reserves for depreciation and taxes. It does not question that under a seven cent fare it has enjoyed a return of more than a fair percentage above the constitutional line of confiscation on the fair value as found by the commission. Nor is it questioned that a return of six per cent on the value of its capital investment is unconstitutional. The petitioner claims that the commission's estimates are false, and that falsity resides in the fact that at the prevailing cost per head for passenger transportation, it will suffer a deficit on the estimated volume of increased traffic at the six cent fare. The fallacy, however, is in the assumption that the cost ratio under the six cent fare will be the same as under the seven cent fare. The commission answers that the assumption is not true, inasmuch as the increase in traffic is expected, not necessarily in the peak hours, but in large part from the patronage in off hours which was diverted to Municipal Railway, or discontinued upon the inception of the higher rate, and which is expected to be regained materially upon the reduction of the fare and the improvement of the service. The petitioner also claims that the commission did not consider the evidence of a probable increase in labor costs pursuant to pending negotiations with labor unions. The commission on the other hand states that it did give consideration to that element. The commission's figures, with increased allowances for operating expenses, depreciation and taxes, must be deemed to resolve these disputed points adversely to the petitioner. "Long operation and adequate records make forecasts of net operating revenues fairly certain." (*Driscoll v. Edison Co.*, 307 U. S. 104, 120.)

The foregoing discussion demonstrates that the interests of the investor have received constitutional protection by the action of the commission. Under rule by competition and the consequent great deterioration in its capital investment, the utility's ability to attract capital has undoubtedly suffered. But this is not an element that can be

controlled by the regulatory body beyond the possibility of insuring to the utility a fair return on the value of the capital investment when business is profitable. The fact that the utility has suffered deficits in the past does not justify excessive profits in the future. (Los Angeles Gas Co. v. Railroad Com., 289 U. S. 287, 313; Federal Power Com. v. Natural Gas Pipeline Co., 315 U. S. 575, 590.) "When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost of quality of service." (West Ohio Gas Co. v. Comm. (No. 1), 294 U. S. 63, 72.)

The record is also clear that the commission has not been arbitrary in acting for the protection of the public which is under compulsion to use the present depleted and inadequate service, or which may be expected to make use of an improved service. As the commission said in its opinion, "After making such allowance [for war time difficulties] the important question remains to what extent the ratepayer, under war conditions, should be compelled to pay the same or higher rates for an inadequate and inferior service while the utility enjoys abnormal profits." It is unnecessary to consider whether the seven cent fare would still be unreasonable were the petitioner performing a fully adequate and efficient service. The findings of inadequacy in the maintenance and service are supported by the evidence. The commission is empowered under the statute in fixing the fare to take into consideration the quality of the facilities and service. The commission decided that even in war time improvement was possible, and that the value of the improved service would be no more than six cents. The problem of the value of the service, and the correctness of the commission's decision on the consumer interest, do not involve constitutional questions, so long as otherwise the investor or company interest has received adequate consideration by the commission. When the company interest has received constitutional protection, the findings of the commission on the consumer interest become final in the proceeding. The question involving that interest then has been answered by the commission correctly pursuant to the

statute and the authorities to the effect that the reasonableness of rates should not be considered apart from the adequacy of the service, and that the public should not be charged more than the service is reasonably worth. The statute is a legislative recognition of the public's right to demand that consideration be given to the value of the service. (*Covington etc. Turnpike Co. v. Sandford*, 164 U. S. 578, 596; *Spring Valley Water Works v. San Francisco*, 192 Fed. 137; see Article, Value of the Service as a Factor in Rate-Making, 82 Har. Law Rev. 516.)

In the final analysis the question whether the right to just compensation for the service rendered has been denied to the utility depends upon the special facts in the case. (*The Minnesota Rate Cases*, 230 U. S. 352, 434.) Each case must be controlled by its own circumstances. (*Los Angeles Gas Co. v. Railroad Com.*, 289 U. S. 287, 315.) Pragmatic adjustments depend upon the particular facts. (*Federal Power Com. v. Natural Gas Pipeline Co.*, *supra*.) It does not appear from the facts in this record that the rate fixed by the commission is so unreasonably low as to call for a declaration that Market Street Railway Company has been deprived of its property without due process of law or without just compensation.

The petitioner asserts some errors in the admission and consideration of statistical and other documentary evidence. It is not the function of the reviewing tribunal in these proceedings to set aside the legislative finding for mere errors of procedure not amounting to lack of due process. Its duty is to ascertain whether the legislative process has resulted in confiscation. (*West v. C. & P. Tel. Co.*, 295 U. S. 662, 674.)

The petitioner objects to the apparent indeterminate duration of the experimental period under the six cent fare fixed by the commission. The commission still has jurisdiction and if from the monthly reports filed by the company during a reasonable experimental period it appears that the expected increase in passenger traffic on the utility's system due to the reduction in fare and improvement in service does not materialize, the commission has

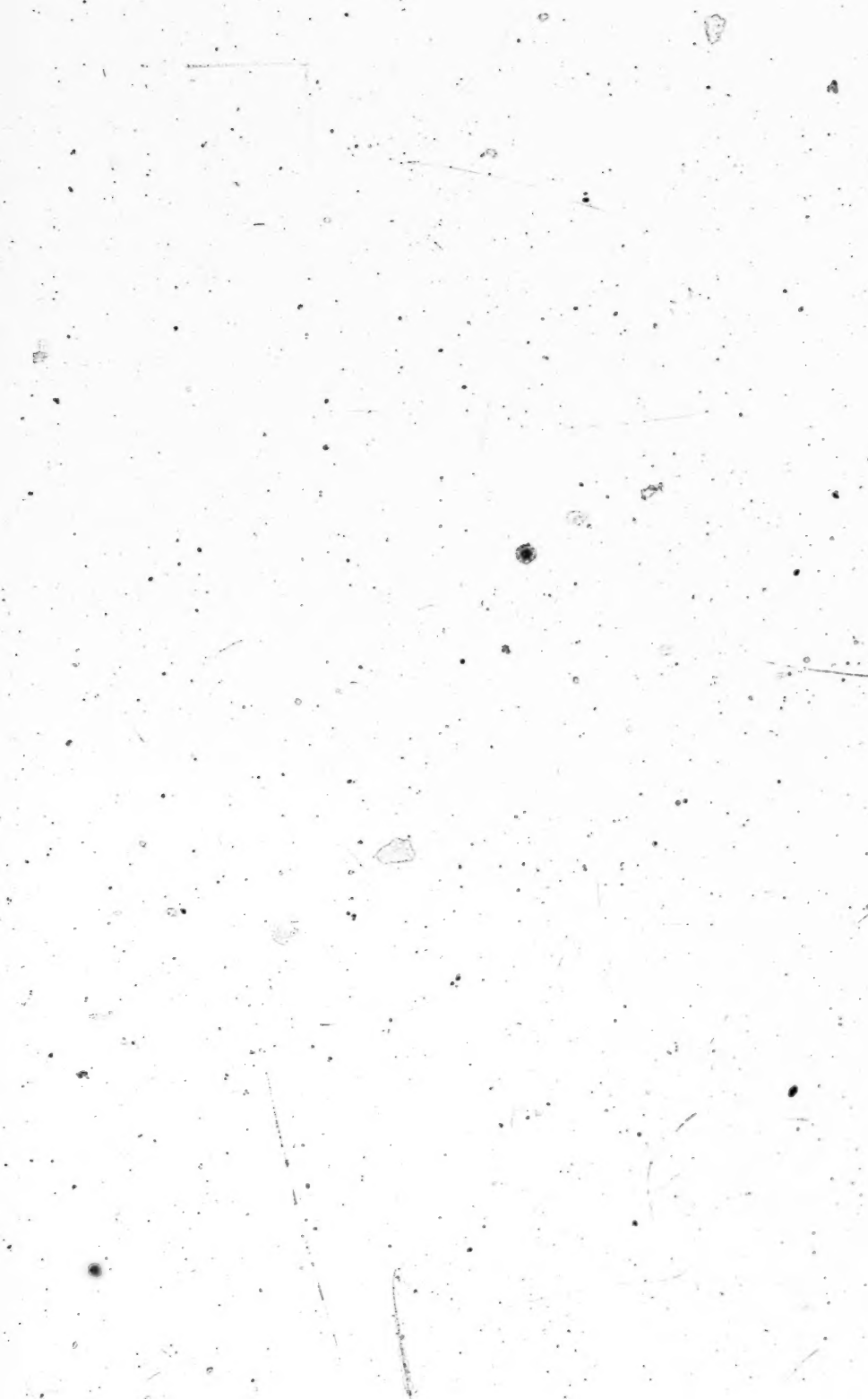
the power to make appropriate adjustments. As the prescribed rate is expressly stated to be tentative, there is no ground for assuming that the commission will reject an application to make such changes as experience may show to be necessary in order to produce the stipulated revenue. (Clark's Ferry Co. v. Commission, 291 U. S. 227, 241.)

The order is affirmed.

SHENK, J.

We Concur: Gibson, C. J.; Curtis, J.; Edmonds, J.;
Carter, J.; Traynor, J.; Schauer, J.

(4205)



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U.S. District Court, U. S.

FILED

SEP 26 1914

CHARLES H. COOPER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

No. 511

MARKET STREET RAILWAY COMPANY,

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, FRANK E. HAVENNER, O. C. BAKER, ET AL, ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT AS TO JURISDICTION

CYRIL APPEL,

FRED T. SMITH,

FRANK E. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILGRIM, MADISON & BUTTS,

Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 511

MARKET STREET RAILWAY COMPANY,

vs.

Appellant,

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND FRANCK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE AND FRANK W. CLARK, THE MEMBERS OF AND CONSTITUTING THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Appellees

STATEMENT AS TO JURISDICTION

This is a second appeal in the above entitled case. The facts on this appeal are identical, except that this appeal was taken after the expiration of thirty days from the filing of the decision and judgment of the Supreme Court of the State of California; the earlier appeal was taken prior to the expiration of the thirty days.

We respectfully refer to the Statement as to Jurisdiction on the first appeal for a statement of the case, the opinions below, the statutory provisions believed to sustain jurisdiction, the state statute involved, the cases believed to sustain the jurisdiction of this Court, the manner in which the federal questions were raised and passed upon, and a statement of the grounds upon which it is contended the federal questions involved are substantial. In this

statement we shall point out the problems which have led to this second appeal.

Under the opinions of this Court in

Puget Sound Co. v. King County, 264 U. S. 22;

Dept. of Banking v. Pink, 317 U. S. 264, and

Cole v. Violette, 319 U. S. 581,

counsel for appellant are uncertain whether, within the meaning of section 237(a) of the Judicial Code, the decision and judgment of the Supreme Court of California became final on July 27, 1944, when that court denied the petition for rehearing, or on August 1, 1944, when the thirty-day period following the filing of the decision and judgment expired. Counsel are also uncertain whether, if the decision and judgment was not final until August 1, 1944, the first appeal in this case, allowed July 31, 1944, is premature. Accordingly, to avoid any possible jurisdictional defect, and following a practice sanctioned by the decisions of this Court,¹ we have taken this second appeal.

The jurisdictional problem presented is important to the Bar of California. Until the decisions in *Dept. of Banking v. Pink*, 317 U. S. 264, supra, and *Cole v. Violette*, 319 U. S. 581, supra, it generally was believed that a judgment of the Supreme Court of California became final for the purposes of review by the Supreme Court of the United States upon the expiration of the thirty-day period following the filing of the decision and judgment of the state court, and that, as a corollary, the time within which an appeal or writ of certiorari might be applied for commenced to run at that time. The foregoing decisions, however, indicated that a judgment of the Supreme Court of California is final, for purposes of federal review, upon its filing, and that the time for appeal or certiorari then commences to run—unless of

¹ *Ohio Pub. Serv. Co. v. Fritz*, 274 U. S. 12; *Rio Grande Ry. v. Stringham*, 239 U. S. 44.

course the period is extended by timely petition for rehearing. The point however was not directly involved in either of the above decisions and it is respectfully urged that it be expressly decided on this appeal.

Under the California law and practice, a decision of the Supreme Court of California, when rendered, is filed with the clerk of the court. The decision concludes, in each case, with a statement disposing of the appeal, i. e., "the judgment is affirmed," "the judgment is reversed," or a similar appropriate order. In the case at bar the concluding statement is, "The order is affirmed." By express provision of the ~~California~~ Rules on Appeal (hereinafter quoted) the decision does not become "final" until thirty days after its filing, unless otherwise ordered by the court prior to the expiration of the thirty-day period.

Some confusion has existed in the past as to just what constitutes the "judgment" of the court; whether it be the concluding statement in the court's decision, or the remittitur which issues after the judgment becomes final. The Rules on Appeal above referred to, which became effective July 1, 1943, seem to make it clear that the concluding statement in the court's decision is its judgment. This is confirmed by the form of the remittitur, which is issued by the clerk at the expiration of the thirty-day period. The remittitur bears a certificate stating that the judgment copied therein is "a true copy of an original judgment entered in the above entitled cause" on the day the decision was filed. In the case at bar the remittitur (excluding the caption) reads as follows:

"The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged and Decreed by the Court that the Order of the Railroad Commission of the State

of California, in the above entitled matter is hereby affirmed.

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 1st day of July, 1944; and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 1st day of August, A. D. 1944.

A. V. HASKELL,
Clerk,

By I. M. JOHNSON,
Deputy."

An excellent discussion of the applicable rules, and of the finality thereunder of judgments of the Supreme Court of California, is found in an article by Mr. B. E. Witkin,² "*New California Rules on Appeal*," 17 So. Cal. L. Rev., at page 248 et seq. (March 1944).

The pertinent provisions of the Rules on Appeal are as follows:³

² Mr. Witkin is Reporter of Decisions, Supreme Court of California. He was the draftsman for the Judicial Council of the State of California of the Rules on Appeal.

³ Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California, adopted by the Judicial Council of California pursuant to sec. 961 of the California Code of Civil Procedure (chap. 477, Cal. Stats. 1941, as amended by chap. 4, Cal. Stats. 1943), which provides:

"The Judicial Council shall have the power to prescribe by rules for the practice and procedure on appeal, and for the time and manner in which the records on such appeals shall be made up and filed, in all civil actions and proceedings in all courts of this State.

"The Judicial Council shall report the rules prescribed by it to the Legislature on or before March 31, 1943.

"The rules reported as aforesaid shall take effect on July 1, 1943, and thereafter all laws in conflict therewith shall be of no further force or effect."

The Rules on Appeal were reported by the Judicial Council in accordance with the above statute and became effective on July 1, 1943. They are published in 22 Cal. (2d) (1).

Rule 24. Decision on appeal

(a) [When decisions become final] All decisions of the reviewing courts shall be filed with the clerk. A decision of the Supreme Court becomes final 30 days after filing unless otherwise ordered prior to the expiration of said 30-day period. Pursuant to article VI, section 4c, of the Constitution, a decision of a District Court of Appeal becomes final as to that court, 30 days in civil cases and 15 days in criminal cases after filing, and thereafter is not subject to modification or rehearing by said court. When an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification.

• • • • •

Rule 25. Remittitur

(a) [Issuance and transmission] A remittitur shall issue after the final determination of any appeal, or of any original proceeding in review in which an alternative writ or order to show cause has been issued. Unless otherwise ordered, the clerk of the Supreme Court shall issue the remittitur when a judgment of that court becomes final, and the clerk of a District Court of Appeal shall issue the remittitur 30 days in civil cases and 15 days in criminal cases after a judgment of that court becomes final therein. The remittitur shall be deemed issued on the clerk's entry thereof in the register, and shall be transmitted immediately, with a certified copy of the opinion, to the lower court or tribunal.

(b) [Issuance forthwith]. For good cause shown, or on stipulation of the parties, the Supreme Court may direct the immediate issuance of a remittitur. The District Court of Appeal may direct the immediate issuance of a remittitur on stipulation of the parties.

(c) [Stay of issuance] A reviewing court, for good cause, may stay the issuance of a remittitur for a reasonable period.

(d) [Recall of remittitur] A remittitur may be recalled by order of the reviewing court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth facts which would justify the granting of a motion.

Rule 27. Rehearing in court rendering decision

(a) [Power to grant rehearing] The Supreme Court or a District Court of Appeal may grant a rehearing in any cause after its own decision; and any cause pending in a department of the Supreme Court may be ordered heard by the Supreme Court in bank. A rehearing or hearing in bank may be granted on petition, as provided in subdivision (b) of this rule, or on the court's own motion, prior to the time the decision becomes final therein.

(b) [Time for filing petition] A party seeking a rehearing in a criminal case in the District Court of Appeal must serve and file a petition for rehearing within 8 days after the filing of the decision. A party seeking a rehearing in any other case, either in the District Court of Appeal or in the Supreme Court, or a hearing by the Supreme Court in bank after a decision in department, must serve and file a petition therefor within 15 days after the filing of the decision. The same number of copies shall be filed as is required by Rule 16.

(c) [Time for filing answer] In a criminal case in the District Court of Appeal, the adverse party may serve and file an answer to the petition within 11 days after the filing of the decision. In all other cases an answer may be served and filed within 23 days after the filing of the decision.

(d) [Form of petition and answer] Insofar as practicable, the petition and answer shall conform to the provisions of Rule 15.

(e) [Determination of petition] An order of the Supreme Court granting a rehearing shall be signed by at least 4 justices assenting thereto, and filed with the clerk; and a hearing in bank after decision in department may be ordered as provided in article VI, section 2, of the Constitution. If no order is made before the decision becomes final, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect."

From the foregoing it appears clear that the judgment of the Supreme Court of California subject to review by this Court is the judgment which forms a part of the original decision and which is final in terms when filed. By express provision of state law, however, this judgment does not become final until thirty days after it is filed. The "non-finality" thus provided for appears to be "non-finality" in the sense that the judgment may still be modified by the court on its own motion or on the motion of the parties. At the expiration of thirty days, unless otherwise ordered prior thereto, the court becomes powerless to change or modify the judgment.

See,

Oakland v. Pacific Coast Lumber etc. Co., 172 Cal. 332, 337;

Estate of Ross, 189 Cal. 317, 318.

While the opinions in the *Pink* and *Cole* cases, supra, indicate that the judgments of the Supreme Court of California are final for purposes of federal review when filed, and while counsel for appellant assumed that such was the rule when the first appeal herein was taken, it should be emphasized that certain practical considerations make against this conclusion.

If appeals be allowed or certiorari applied for to review California judgments prior to the expiration of the thirty-

day period, the appellate writs may become fruitless by reason of the subsequent grantings of rehearings or modifications of the judgments by the state courts. It is believed that the power of the state court so to grant rehearings or modify its judgments in accordance with the state practice cannot be affected by intervening appeals or petitions for writs of certiorari. If, on the other hand, the state practice is given effect review by this Court cannot be sought until the judgment is final in every sense. Delay is not a significant factor, for the maximum period is thirty days, and at least twenty-three days may be added in each case by the filing of a petition for rehearing (Rule 27, supra).

As is often true, more important than the manner in which the point is decided, is that it be decided.

Dated: San Francisco, California, September 20, 1944.

Respectfully submitted,

CYRIL APPEL,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
HENRY G. HAYES,
Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

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In the Supreme Court

**OF THE
United States**

OCTOBER TERM, 1944

Office - Supreme Court, U. S.

FILED

SEP 26 1944

**CHARLES ELMORE ORRIPLEY
CLERK**

No. 510 - 511

MARKET STREET RAILWAY COMPANY,

Appellant,

VS.

**RAILROAD COMMISSION OF THE STATE OF
CALIFORNIA and FRANK R. HAVENNER,
C. C. BAKER, JUSTUS F. CRAEMER, RICH-
ARD SACHSE and FRANK W. CLARK, the
members of and constituting the Rail-
road Commission of the State of Cali-
fornia.**

**BRIEF OF APPELLANT OPPOSING APPELLEES'
MOTION TO DISMISS OR AFFIRM.**

**CYRIL APPEL,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
HENRY G. HAYES,**

Counsel for Appellant.

**PILLSBURY, MADISON & SUTRO,
*Of Counsel.***

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

MARKET STREET RAILWAY COMPANY,
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VS.

**RAILROAD COMMISSION OF THE STATE OF
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ARD SACHSE and FRANK W. CLARK, the
members of and constituting the Rail-
road Commission of the State of Cali-
fornia.**

**BRIEF OF APPELLANT OPPOSING APPELLEES'
MOTION TO DISMISS OR AFFIRM.**

The sole ground upon which appellees move to dismiss the appeal or affirm the judgment of the Court below is that no substantial federal question is presented. Concededly every other requisite to this Court's jurisdiction on appeal exists.

The motion is without merit. Obviously the federal questions presented are not frivolous, nor do appellees so contend. Neither are they foreclosed by any prior decision of this Court. On the contrary, they were decided in a manner in conflict with the decisions of this Court.

I.

THE QUESTION WHETHER APPELLANT HAD NOTICE OF AND OPPORTUNITY FOR HEARING, IS A SUBSTANTIAL FEDERAL QUESTION.

In our jurisdictional statement we pointed out that the procedure followed by the Commission in this case did not give appellant the notice and opportunity for hearing guaranteed by the due process of law clause of the Fourteenth Amendment under the principles laid down in *Morgan v. United States*, 304 U.S. 1. Appellees reply that since the caption of the case and the order instituting the proceedings referred to the reasonableness of appellant's rates, and since this caption was read by the presiding Commissioner at the commencement of the proceedings,¹ appellant was sufficiently apprised that its rates were in issue and was given an opportunity for hearing on that issue. These very circumstances were present in the *Morgan* case and held insufficient. Appellees further contend that the procedure here followed was approved in *American Bridge Co. v. Comm'n*, 307 U.S. 486. That case is authority for no such proposition. There the similar contention made by the appellant was not only an afterthought (307 U.S., pp. 492-493), but, as the Supreme Court

¹Reporter's Transcript, p. 2.

of California pointed out, "the issues were . . . clearly defined and understood by all parties concerned during the course of the hearing."²

In contrast, after the proceedings in the case at bar had been instituted by a conventional form of order in the broadest possible terms, all concerned took the position that rates were not involved. Three Commissioners said expressly that the subject of the hearing was otherwise.³ The principal witness for appellees pointed out that the study and investigation made by him and other Commission witnesses "does not analyze the rate situation."⁴ Examination of the record discloses unequivocally that the hearing was concerned with improvement in service. As was stated by the presiding Commissioner:⁵

"Well, of course, this investigation was undertaken with the hope that it might result in some improvement of the public transportation for the people of San Francisco and the investigation will be very broad in its scope and will go to almost every aspect of that question as it affects the operations of the Market Street Railway Company."

The only references to rates were incidental and historical. Evidence customary in a rate case is conspicuous by its absence. Directly contrary to the *American Bridge Co.* case, the course of proceedings here specifically directed inquiry to issues other than rates. The result was a hearing in which petitioner was not fairly informed of what

²*American Toll Bridge Co. v. Railroad Commission*, 12 Cal. (2d) 184, 207. And see the opinion of this Court, 307 U.S. 486, 492-493.

³Exhibit E to Petition for Writ of Review.

⁴Exhibit F to Petition for Writ of Review; Reporter's Transcript, pp. 138, 156.

⁵Exhibit E to Petition for Writ of Review.

the issues were to be, and in which the issue of the reasonableness of its rates was never "clearly defined and understood by all parties concerned during the course of the hearing."⁶ Further in contrast to the *American Bridge Co.* case, when appellant in this case was first apprised by the decision and order of the Commission that its rates were attacked, it immediately asked an opportunity to submit evidence on this issue.⁷ This was denied.⁸

Appellees cite *West Ohio Gas Co. v. P. U. Commission*, 294 U.S. 63, 70, for the proposition that even if the proceedings before the Commission were conducted without notice and opportunity for hearing, still the order of the Commission is not invalid unless "confiscation be shown." That case, of course, does not so hold, but its citation serves to emphasize the substantial character of the remaining grounds of appellant's attack upon the order. The proceeding having been conducted as just described, it is not surprising that the order is without support in the evidence, is contrary to the evidence, and is confiscatory.

II.

THE QUESTIONS WHETHER THE ORDER IS WITHOUT SUPPORT IN THE EVIDENCE, IS CONTRARY TO THE EVIDENCE, AND IS CONFISCATORY, ARE SUBSTANTIAL FEDERAL QUESTIONS.

The making of an administrative order without substantial evidence to support it is a denial of procedural due

⁶Footnote 2, *supra*.

⁷Exhibit C to Petition for Writ of Review.

⁸Appendix 2 to Statement as to Jurisdiction.

process. As this Court said in *Railroad Commission v. Pacific Gas & Electric Co.*, 302 U.S. 388, 392, 393:

“ * * * we are concerned only with the question of procedural due process, that is, whether the Commission in its procedure, as distinguished from the effect of its order upon respondent's property rights, failed to satisfy the requirements of the Federal Constitution.

“ * * * There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the Commission *must act upon evidence* and not arbitrarily.” (Italics ours.)

The quotation from the same case in appellees' statement opposing jurisdiction must be read in the light of the foregoing.

In the jurisdictional statement we pointed out the indispensable particulars—entirely aside from the rate base—concerning which evidence is lacking in this record. Appellees do not dispute our statements; they refer this Court to no evidence supporting the order. Their motion in this regard consists simply of one sentence, asserting without supporting data, references or argument, that appellant has failed to carry the burden of proving confiscation and failed to overcome the presumption of the validity of the Commission's order. They refer to *Power Comm'n v. Hope Gas Co.*, 320 U.S. 591. But in that case the Commission found *on evidence* that the rate of return fixed would permit Hope to earn \$2,191,314 annually, and that this return would “enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks as-

sumed" (320 U.S., 604, 605). In the case at bar there is no evidence of estimated traffic under the new fare, of estimated revenue under the new fare, of estimated expense under the new fare—no evidence from which the Commission could determine or form a reasonable estimate of appellant's earnings or rate of return under the order. For one example, the Commission assumed in support of the figures given in its decision as the estimated revenues under the six-cent fare an increase of ten per cent in passenger traffic.⁹ There is no evidence in the record to support this or any other figure. Paraphrasing this Court's opinion in *West Ohio Gas Co. v. P. U. Commission*, 294 U.S., 63, 68, the Commission might with as much reason have assumed an increase of five per cent, or of eight per cent, or of fifteen per cent, or of any other figure. "This was wholly arbitrary" (294 U.S., 68).

Further, the figures given by the Commission as the gross revenues and operating expenses for the first eight months of 1943, which figures formed the basis of other calculations made by the Commission, were not based on any evidence in the record. In its brief before the California Supreme Court the Commission frankly admitted that certain figures in its decision relating to appellant's operating revenues were taken from reports outside the record and not in evidence. It is not due process of law to base a determination upon evidential facts forming no part of the record.

⁹Nothing in the decisions or the orders of the Commission showed that this was how the Commission had arrived at the figures stated, but the Commission conceded in its answer to the petition for writ of review in the court below (which forms a part of the record in this case) that its figures were based upon this assumed increase (Answer of Railroad Commission to Petition for Writ of Review, p. 29).

"The basic elements of such a hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence" (*Carter v. Kubler*, 320 U.S. 243, 247).

And see:

Ohio Bell Tel. Co. v. Comm'n, 301 U.S. 292, quoted below.

Notwithstanding appellees' concession that the Commission's essential conclusions in this and other regards are without any evidentiary support in the record, the Supreme Court of California sustained the order upon the ground that "The commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenues, expenses, and other costs."¹⁰

This ruling is contrary to the most fundamental concepts of due process of law. As this Court said in *Ohio Bell Tel. Co. v. Comm'n*, 301 U.S. 292, 300-302:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record.

.

An attempt was made by the Commission and again by the state court to uphold this decision without evidence as an instance of judicial notice. Indeed, decisions of this court were cited . . . as giving support to the new doctrine that the values of land and labor

¹⁰See Appendix 3 to Statement as to Jurisdiction.

and buildings and equipment, with all their yearly fluctuations, no longer call for evidence. Our opinions have been much misread if they have been thought to point that way. Courts take judicial notice of matters of common knowledge. * * * They take judicial notice that there has been a depression, and that a decline of market values is one of its concomitants. * * *

How great the decline has been for this industry or that, for one material or another, in this year or the next, can be known only to the experts, who may even differ among themselves. For illustration, a court takes judicial notice of the fact that Confederate money depreciated in value during the war between the states * * * but not of the extent of the depreciation at a given time and place. * * * The distinction is the more important in cases where as here the extent of the fluctuations is not collaterally involved but is the very point in issue. * * *

What was done by the Commission is subject, however, to an objection even deeper. * * * There has been more than an expansion of the concept of notoriety beyond reasonable limits. From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion.” (Italics ours.)

The Commission cited *Clark's Ferry Co. v. Comm'n*, 291 U.S. 227, as authority for the proposition that, without evidence, it could “forecast into the future what the traffic was going to be * * *.”¹¹ This is another example of an

¹¹Opinion on rehearing, Appendix 2 to Statement as to Jurisdiction.

opinion of this Court "much misread." In the *Clark's Ferry* case, this Court approved a tentative schedule of rates based upon evidence taken at a full and fair hearing. The reports of that case expressly disclose that expert testimony concerning estimated revenues under the order was taken in the proceeding before the Commission.¹² There is no such evidence in this case.

Not only are the Commission's findings in the instant case as to traffic and revenue without evidentiary support; they are contrary to the evidence. To cite but one example: The Commission assumed an increase in passenger traffic of ten per cent in arriving at an estimated gross revenue of \$8,500,000.¹³ At the same time it assumed an increase of only \$60,000 in operating expense,¹⁴ less than one per cent. The uncontradicted testimony is that an increase in traffic would require a proportionate increase in facilities,¹⁵ with a proportionate increase in operating expense.

Turning to the question of confiscation, on the Commission's own figures it is manifest that the effect of the order will be to compel appellant to operate at an actual loss. The Commission's figures for operation under the six-cent fare were: gross revenue \$8,500,000; operating expenses \$8,000,000.¹⁶ Deducting the ten per cent assumed increase, which is without support in the evidence, the gross revenue becomes \$7,650,000, or \$350,000 less than the

¹²See the opinion of the Superior Court of Pennsylvania, 108 Pa. Super. Ct. 49, 165 Atl. 261, 272.

¹³Supra Note 9; Appendix 1 to Statement as to Jurisdiction.

¹⁴Appendix 1 to Statement as to Jurisdiction.

¹⁵Reporter's Transcript, pp. 260-261.

¹⁶Appendix 1 to Statement as to Jurisdiction.

estimated operating expenses. An actual operating loss is still shown even if the operating expenses allowed for the seven-cent fare (without stimulation of traffic) be taken. The Commission estimated that operating expenses under the seven-cent fare would be \$7,940,000.¹⁷ Allowing for no increase in operating expense as a corollary to the disallowance of the assumed increase in passenger traffic, the figures still remain:

Gross Revenue	\$8,500,000
Less 10%	850,000
	<hr/>
	\$7,650,000
Less operating expenses	7,940,000
	<hr/>
A loss of	\$ 290,000

Looking at the matter another way and assuming that there may, in fact, be increased traffic amounting to \$850,000, a proportionate increase in expense (apart from depreciation and taxes) would be \$660,000, instead of the \$60,000 allowed by the Commission—more than sufficient to wipe out the Commission's estimated profit of \$500,000.

The foregoing answers the points in appellees' motion. Other substantial questions involved are set forth in our jurisdictional statement. It would be difficult and inappropriate at this stage, without a printed record or even an unprinted record consecutively paged to which reference can be made, to elaborate our contentions. Further argument and analysis of the record properly await the hearing on the merits. The case is within the appellate juris-

¹⁷Appendix 1 to Statement as to Jurisdiction.

diction of this Court. It presents substantial federal questions. Appellees' motion should be denied.

Dated, San Francisco, California,
August 21, 1944.

Respectfully submitted,

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

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FEB 5 1945

**CHARLES ELMORE DROFFEL
CLERK**

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

Nos. 510 - 511

MARKET STREET RAILWAY COMPANY,

Appellant,

VS.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

FRANCK R. HAVENNER, C. C. BAKER, et al., etc.

Appeals from the Supreme Court of the State of California

BRIEF FOR APPELLANT.

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,

Of Counsel.

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In the Supreme Court
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Nos. 510-511

MARKET STREET RAILWAY COMPANY,

Appellant,

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F. CRAEMER, RICHARD SACHSE and FRANK W.
CLARK, the Members of and Constituting the
Railroad Commission of the State of Cali-
fornia,

Appellees.

BRIEF FOR APPELLANT.

OPINIONS BELOW.

The opinion of the Supreme Court of California (R. 598) is reported at 24 A.C. 377, 150 Pac. (2d) 196. The opinion of the Railroad Commission of the State of California (R. 59) is reported at 45 C.R.C. 53. The opinion of the Railroad Commission on the order denying a rehearing (R. 114) is reported at 45 C.R.C. 162.

JURISDICTION.

The decision and judgment of the Supreme Court of California was rendered July 1, 1944 (R. 598, 623, 624). A petition for rehearing was denied July 27, 1944 (R. 623).

The federal questions were appropriately raised and preserved in the record. The invalidity of the Commission's order under the due process clause of the Fourteenth Amendment was urged at the first opportunity in appellant's petition for a rehearing before the Railroad Commission (R. 105, 106, 107 and 109), and likewise in the petition for writ of review in the Supreme Court of California (R. 1, 4, 5 and 8). Both the Commission (R. 115-116, et seq.) and the court below (R. 599, et seq., 621, 622) passed upon the federal questions and the court below sustained the validity of the Commission's order.

In No. 510, the appeal was allowed July 31, 1944 (R. 630).

In No. 511, the appeal was allowed September 20, 1944 (R. 646).

Both appeals are from the same judgment. On the merits they present identical questions. The jurisdictional problem that led to the taking of two appeals in the same case is discussed in our statement as to jurisdiction on the appeal in No. 511.

If it be held that the judgment in the case at bar was final when filed and that the time for appeal then commenced to run, it would appear appropriate to dismiss the appeal in No. 511. It is believed that the decisions in *Dept. of Banking v. Pink*, 317 U. S. 264, and *Cole v. Violette*, 319 U. S. 581, support such action. If, on the other

hand, it be held that the judgment became final on August 1, 1944 (thirty days after its filing) and that the time for appeal then commenced to run, it would appear that the appeal in No. 510—having been taken before the judgment sought to be reviewed became final—was premature and should be dismissed.

See

Ohio Pub. Serv. Co. v. Fritz, 274 U.S. 12;

United States v. Crescent Amusement Co., Nos. 17, 18 and 19, October Term 1944, decided December 11, 1944, _____ U. S. _____, 65 Sup. Ct. 254, 256-257.

APPROPRIATE DISPOSITION OF THIS CASE IN THE LIGHT OF EVENTS OCCURRING SINCE THE RENDITION OF THE ORDER OF THE RAILROAD COMMISSION AND OF THE DECISION OF THE SUPREME COURT OF CALIFORNIA.

Another matter, closely related to jurisdiction, should at the outset be called to this Court's attention. At the time these proceedings were instituted appellant was a public utility street railway company operating in the City and County of San Francisco and the County of San Mateo. It was subject to the jurisdiction of the California Railroad Commission under the provisions of the California Public Utilities Act.¹ These appeals attack the validity of an order of this Commission directing appellant to reduce its San Francisco base cash fare from 7 cents to 6 cents (R. 91). On September 29, 1944—after the decision of the Supreme Court of California sustaining this

¹Cal. Stats. 1915, p. 115, as amended (Deering's California General Laws, Act No. 6386).

rate order and after allowance of both appeals herein—all appellant's franchises were canceled and its operative properties acquired by the City and County of San Francisco. These properties are now part of the San Francisco Municipal Railway system and are being operated under a uniform 7-cent fare. The municipal system is not subject to the jurisdiction of the Railroad Commission of the State of California.² Since the challenged order has been stayed pending review, the result of this transfer of the properties is that the order can never become operative. The case is not moot, for upon its final determination depends the disposition of a substantial fund accumulated under the stay orders.³ Nevertheless, acquisition of the opera-

²*U. S. v. San Francisco*, 310 U.S. 16, 27, footnote 20, and authorities cited.

³The sale of appellant's properties, occurring after the allowance of the appeals herein, does not appear of record. The record shows that the order of the Commission has been stayed pending appeal (R. 631), but since further facts were not pertinent until the sale of the properties occurred, the terms of the stay orders were not included in the record. In order that this Court may be fully advised of the status of the case at the present time, we append to this brief the following documents:

"Exhibit A," a copy of the order of the Supreme Court of California, dated March 8, 1944, duly certified by the Clerk of that court, staying the order of the Commission and providing for the filing by appellant with the court below of an undertaking in the amount of \$100,000 and for the deposit by appellant of additional amounts necessary to secure the payment by appellant of the 1-cent difference between the 6-cent and 7-cent fare in the event the order of the Commission ultimately should be sustained.

"Exhibit B," a certificate of the Clerk of the Supreme Court of California showing the amounts deposited by appellant pursuant to the order of the California Supreme Court—aggregating \$603,319.53 in addition to the undertaking of \$100,000.

"Exhibit C," a copy of the contract between appellant and the City and County of San Francisco, dated September 14, 1944, for purchase of appellant's properties.

"Exhibit D," a copy of the amendment to the charter of the City and County of San Francisco, approved by the voters at a

tive properties by San Francisco raises certain questions as to the right disposition of these appeals.

As we show hereafter,⁴ the Commission conceded that if appellant were compelled to operate under a 6-cent fare and if, in addition, it were to carry at this fare the same number of passengers it carried under a 7-cent fare, it would operate at an out-of-pocket loss. However, the Commission based its order upon its expectation that there would be a substantial increase in the number of passengers under a 6-cent fare. On the basis of this expectation and of certain assumptions as to greatly increased revenue and slightly increased expense, the Commission concluded that appellant would be able to operate at a profit under the 6-cent fare.⁵

It is now certain that the anticipated stimulation of traffic cannot take place, for the 7-cent fare was collected to the end of appellant's operations and has been continued in effect under municipal operation. It is also certain that if appellant is compelled to pay over the difference between the 7-cent fare collected and the 6-cent fare ordered, it will suffer a large operating loss for the period from the effective date of the order to the date of the sale

special election on May 16, 1944, authorizing the acquisition of appellant's properties.

"Exhibit E," a copy of pertinent portions of Assembly Concurrent Resolution No. 3, Chapter 13 of Resolutions, Fifty-fifth (Fourth Extraordinary) Session, California Legislature, approving the amendment to the charter of the City and County of San Francisco.

⁴Infra, pp. 39, et seq., 66-67.

⁵Infra, p. 39 et seq.

of its properties.⁶ It is, of course, recognized that the stay of the Commission's order was obtained by appellant. But the unusual feature of this case is that the 6-cent fare order was purely an experimental order, and the sale of appellant's properties has eliminated any possibility of adjustment in any future operations. The order was characterized by the Commission and its members as an "experimental" order, "primed with the element of conjecture" and subject to "necessary adjustments" "should the experiment fail of its objective" (R. 90, 103-104). As stated by the Commission (R. 90):

"We think a decrease at this time should also be gradual and must of necessity be experimental. We shall, at this time, reduce the Market Street Railway Company fare by only one cent and fix a six-cent cash fare as an interim rate."

Further, as stated in the concurring opinion of Commissioners Baker and Craemer (R. 103-104):

"It is . . . obvious that, during such experimental period, the volume of traffic on the Market Street Railway system must be materially increased, for otherwise the proposed plan cannot effect a solution of the problem. Such increase in the volume of traffic, of course, will necessitate an increase in the frequency of the service, which, in turn, will require both additional equipment and additional manpower, with attendant increase in the cost of operations. All this may be achieved, with attendant benefit to both the

⁶Appellant is prepared to show that if it is compelled to account on the basis of a 6-cent fare during the period from the effective date of the order (March 1, 1943) to the date of the sale of its properties (September 29, 1944), it will have suffered an actual operating loss during that period of \$356,936.78.

transportation agency and the patronizing public. On the other hand, the result may be wholly negative with reference to the desired end. It is thus primed with the element of conjecture.

• • • Furthermore, should the proposed plan prove ineffective, the necessary adjustments to follow would be much more simple, from the standpoint of procedure, and involve much less expense, if the experimental process were subject to a definitely defined period."

Another unusual feature of this case is that the people of San Francisco, in connection with the purchase of the Market Street Railway, established the 7-cent fare on the entire combined municipal street railway system (see Exhibits C, D and E, Appendix, pp. 8, 20 and 29).

It may be doubted, whether the Railroad Commission would have made its fare reduction order had it known that within a few months appellant's franchises would be canceled, its operations cease, the so-called experimental period end, the opportunity for making any "necessary adjustments" pass away, and the people of San Francisco establish a uniform 7-cent fare on all lines.

Compare *Bronx Gas & Electric Co. v. Maltbie*, 271 N.Y. 364, 3 N.E. (2d) 512, sustaining the constitutionality of the temporary rate provisions of the New York Public Service Law on the ground that the utility is protected by the provision requiring recoupment under the final rate.

And see *Driscoll v. Edison Co.*, 307 U.S. 104.

In this situation precedent exists under which this Court might vacate the judgment of the court below and the

order of the Commission and remand the cause to the Commission for such further proceedings and order as the Commission shall determine to be appropriate in the light of the changed circumstances.

See

N. Y. ex rel. Whitman v. Wilson, 318 U.S. 688, 690-691;

Patterson v. Alabama, 294 U.S. 600, 607.⁷

In *Marshall v. Bush*, 102 Neb. 279, 167 N.W. 59, a case involving an order of the state railroad commission requiring certain additional services by a railway company, the Supreme Court of Nebraska took the following action (167 N.W. 59, pp. 61-62):

"Since the rendition of the order complained of a condition has arisen of which the court is justified in taking judicial notice. The country is now in a

⁷In the *Patterson* case this Court said (294 U.S., p. 607):

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a nonfederal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case."

Compare *Fly v. Heitmeyer*, 309 U.S. 146, and *Federal Comm'n v. Broadcasting Co.*, 309 U.S. 134, where this court pointed out that on a second hearing on an application for a broadcasting permit the commission properly considered changes in circumstances arising since its original decision.

state of war, and the government of the United States has assumed control over the operation of the railroads. There is a deficiency in motive power and of cars, and a shortage of men. To take the necessary engines and rolling stock to operate this train may decrease to that extent the facilities of defendant for the patriotic duty which is imposed upon it of doing everything possible to meet the demands in the transportation field imposed by the new conditions. Without deciding that the order was unreasonable when made—though inclined to so hold—we are reluctant to sustain it under these circumstances. We have concluded that the order should remain in abeyance until an opportunity is given to the Railway Commission to consider how far the order may impinge upon the powers given by Congress to the Director General of Railways over the operation of the railroads during the war, and whether under the present conditions the order should not be vacated. The order is set aside and the matter remanded to the state Railway Commission for further hearing and consideration."

A similar decision is *Ralston Business Men's Ass'n v. Bush*, 102 Neb. 446, 167 N.W. 727.

This Court has commented in a number of cases on the undesirability of allowing court proceedings to delay for unreasonable periods the operation of rate orders promulgated by commissions having jurisdiction over public utilities. The acquisition by San Francisco of appellant's properties, and the establishment by the City of a uniform 7-cent fare on all lines, eliminates any such element from this case.

Under the law of California the Commission has power to rescind, alter or amend any order or decision made by it.⁸

We believe and submit that this Court should pass upon the merits of the case at this time, thus minimizing litigation costs and effecting an early termination of the controversy for a company whose revenues have ceased. For reasons now to be set forth, we submit that the decision is clearly erroneous. We have, however, deemed it incumbent upon us to call the above situation to the attention of this Court.

STATEMENT OF THE CASE.

Appellant is a public utility street railway company incorporated in 1893 (R. 174). In 1920 it was an inactive subsidiary of United Railroads of San Francisco, the then operating company.⁹ United Railroads had outstanding \$42,948,600 of stock and \$39,242,000 of notes and bonds. It was unable to meet maturities of principal and interest and was reorganized with the approval of appellee Commission.¹⁰ The operating properties were conveyed to

⁸Public Utilities Act of California (Deering's California General Laws, Act 6386) section 64:

"Power to rescind, etc., orders. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions."

⁹*In the Matter of the Application of The United Railroads of San Francisco*, 19 C.R.C. 180.

¹⁰*Ibid.*, pp. 181-188.

appellant. With the approval of the Commission, appellant issued

5% bonds due September 1, 1924..	\$10,166,000.00
6% notes due September 1, 1924..	5,200,000.00
6% prior preference stock	11,750,000.00
6% preferred stock	5,000,000.00
6% second preferred stock	4,700,000.00
Common stock	10,700,000.00

Total..... \$47,516,000.00¹¹

In 1924, with the Commission's approval, the notes and bonds were refinanced by \$15,000,000 of first mortgage 7 per cent bonds.¹² In 1940 the Commission approved a supplemental arrangement extending maturity and reducing interest to 5 per cent.¹³ At the end of 1942 the following of these securities were outstanding:

First mortgage sinking fund 5%	
gold bonds	\$ 4,217,500.00
6% prior preference stock	11,618,500.00
6% preferred stock	4,986,850.00
6% second preferred stock	4,673,700.00
Equipment notes	735,748.28
Common stock	10,647,400.00

There was also an additional long
term debt of 1,041,625.68

Total..... \$37,921,323.96¹⁴

¹¹Ibid., p. 185.

¹²Application of Market Street Railway Company, 24 C.R.C. 464.

¹³Application of Market Street Railway Company, 42 C.R.C. 211; Exhibit 19, R. 287, in evidence, R. 486.

¹⁴Exhibit 2, R. 151, 152, notes 2 and 3; in evidence, R. 375.

Appellant's operations are in San Francisco and San Mateo Counties.¹⁵ In San Francisco it competes with the city-owned San Francisco Municipal Railway System, which began operations in 1912.¹⁶ Ever since that time there has been more or less continuous agitation for the purchase of appellant's properties by the City for municipal operation, and numerous negotiations have taken place.¹⁷ In September 1942 and again in March 1943 appellant's directors passed a resolution approving the action of appellant's president in negotiating the sale of appellant's operative properties to the City and County of San Francisco for \$7,950,000 and authorizing him to take necessary and proper steps to complete the proposed sale.¹⁸ In neither instance, however, was the proposed sale approved by appellant's stockholders or by the voters.¹⁹

For many years appellant has been in a desperate financial condition (R. 557). No dividends have been paid on prior preference stock since January 1, 1924. No dividends have ever been paid on the preferred, second preferred or common stock.²⁰ Until the beginning of the present war boom, which has brought relief "purely temporary in nature" (R. 558), it has been faced with steadily diminishing revenues for a period of about 15 years.²¹ For more than 10 years prior to 1942 it "enjoyed no credit, it was

¹⁵Exhibit 10, R. 165, 166A; in evidence, R. 441.

¹⁶Exhibit 10, R. 165, 175; in evidence, R. 441.

¹⁷Exhibit 10, R. 165, 176; in evidence, R. 441; R. 412-413.

¹⁸Exhibit 8, R. 163; in evidence, R. 433; Exhibit 9, R. 164; in evidence, R. 434.

¹⁹Exhibit 10, R. 165, 176; in evidence, R. 441.

²⁰Exhibit 24, R. 316, 318; in evidence, R. 555. This exhibit discloses the situation to 1938. The profit and loss (surplus) account in Exhibit 2 (R. 151, 154-155; in evidence, R. 375) shows that no dividends have been paid since that time.

²¹Exhibit 10, R. 165, 182; in evidence, R. 441.

powerless to borrow money anywhere, so the only way it could finance itself was by ceasing to pay its current bills for electrical energy to operate its system, which it purchased from Pacific Gas and Electric Company * * *. The debt at its maximum reached a figure of well over \$600,000 which the Company was unable to liquidate in its entirety until March or April of this year [1943]" (R. 557).

During the depression of the 30's, the operating income ran less than half of what it had been (R. 83). Expenses had increased, particularly wages.²² In 1937 the Commission considered appellant's application for increase in fares and held that an increase was necessary.²³ Various arrangements were suggested and tried, and ultimately the Commission settled on a schedule providing, among other rates, for a 7-cent fare in San Francisco, other than on interurban cars.²⁴

No valuation study of appellant's properties has been made since 1920, at which time the engineering department of the Commission prepared an historical valuation of the properties as of June 30, 1920. The present record contains no study of values. It does show, however, that as of December 31, 1942, the book value of appellant's properties was \$41,768,505.20,²⁵ its capitalization \$37,921,323.96.²⁶ The Commission in its 1920 study found the historical reproduction cost of road and equipment as of June 30, 1920, to be \$29,715,147.²⁷ This valuation,

²²40 C.R.C. 526-528.

²³40 C.R.C. 525, 531; Exhibit 10, R. 165, 177; in evidence, R. 441.

²⁴41 C.R.C. 651; Exhibit 10, R. 165, 177; in evidence, R. 441.

²⁵Exhibit 10, R. 165, 243, 244-245; in evidence, R. 441.

²⁶See p. 11, *supra*.

²⁷Exhibit 10, R. 165, 243; in evidence, R. 441.

brought forward to December 31, 1942, by adding additions and betterments and deducting retirements, shows a total amount for road and equipment of \$25,343,543.²⁸

The instant case originated before the Railroad Commission by an order, made on the Commission's motion, instituting an investigation "into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company" (R. 56). Although this order referred generally to rates, along with the many other matters mentioned therein, the Commission announced at the first session that this hearing would deal with matters relating to appellant's service (R. 393), and appellant was specifically directed to produce evidence on that issue (R. 395; and see p. 19, et seq., *infra*). The evidence at the hearing—which covered only two and one-half days—was directed to service problems. At no stage in the proceedings was any issue formulated with respect to rates; at no stage was there any definite complaint or allegation that any rate was unreasonable; at no time prior to the decision did the Commission advise appellant that its rates were in issue, or under attack, or that any change in them was proposed. Discussions and testimony as to the type of order the Commission might be expected to enter related solely to service (*infra*, p. 19, et seq.).

²⁸Exhibit 10, R. 165, 243, 246-247; in evidence, R. 441.

There is passing mention in the record of a report prepared in 1929 by Mr. O'Shaughnessy, City Engineer of San Francisco, which found the reproduction cost new of appellant's depreciable property to be \$42,679,000 as of June 30, 1928 (Exhibit 10, R. 165, 251; in evidence, R. 441).

After the hearing the Commission filed an order directing appellant to reduce its San Francisco base fares from 7 cents to 6 cents (R. 91).

The Commission's decision is unusual.

The decision opens with a short history of the Market Street lines (R. 60-63) and then turns to the question of service, which it characterizes as the "principal issue at this time" (R. 64), and to the "matter of manpower shortage," which it says also "occupies an important place in this proceeding" (R. 73). It finds that the company's service to the public is bad and could be improved (R. 81). It then quotes a number of authorities for a theory of rate making which is nowhere clearly defined but seems to be that the rate should be fixed at a figure considered by the Commission to be equal to the "value of the service." The standard of "value" is not defined, but the Commission apparently had in mind such factors as whether cars are too crowded, equipment insufficiently modernized, etc. (R. 76-82).

Apparently being uncertain that a rate reduction order could rest on "value of service" alone, however, the Commission finally turned from this theory and based its order upon its conclusion that under a 6-cent fare appellant would earn a return of 6 per cent upon the fair value of its property (R. 91). In arriving at value the Commission looked only at the resolutions of appellant's board of directors authorizing the sale of appellant's properties to San Francisco for \$7,950,000, and held that this amount is the maximum present fair value of appellant's properties for rate-making purposes (R. 87, 89).

In determining the rate of return on this base figure of \$7,950,000, the Commission assumed that appellant under the 6-cent fare would have a gross annual operating revenue of \$8,500,000 and operating expenses of \$8,000,000, leaving a net operating income of about \$500,000 (R. 91). These figures appear nowhere in the record and can be derived from no figures in the record. They are based upon no evidence. They are the Commission's own expectations.

The Commission's original decision (R. 89-90) and its decision denying a rehearing (R. 136) indicated that it had based the above expectations of revenue and expense upon its expectation of an increase in traffic in some unstated amount. However, it was not until the Commission filed its answer to appellant's petition for review in the court below that appellant was advised by the Commission that it had based its estimates upon an expectation of an increase of approximately 10 per cent (R. 20, 40). As we show hereafter (*infra*, pp. 41-43), the Commission later was compelled to revise even this delayed computation and admit that its expectation must have been of an increase in traffic of 13.91 per cent. At the same time, the Commission's expectation was that operating revenues would increase less than 1 per cent (*infra*, p. 44). No one of these figures appears in or can be derived from evidence in the record. There is no evidence of the estimated traffic that would or might be expected to move under the 6-cent fare, of the estimated revenue from that traffic, of the estimated expense of handling that traffic.

In reaching its conclusions the Commission relied upon certain figures given by it as the operating revenues of

appellant during the eight-month period, January to August, 1943 (R. 87). There is no evidence in the record which shows appellant's operating revenues after May, 1943. In its briefs in the court below the Commission "frankly admitted" that it had taken its figures from operating reports of appellant not in evidence.

The majority opinion and order, just summarized, was signed by three of the five members of the Commission (R. 92). One of these three also filed a concurring opinion (R. 92). He was even more uncertain of the validity of the "value of the service" basis for fixing rates and expressed the view that while the rate must bear a "reasonable relationship to the quality and character of . . . service," another test is "required" (R. 93), namely, "The Commission may not fix a rate resulting in confiscation of the company's property used and useful in the public service." Purporting to apply this test, the concurring Commissioner concluded, on the basis of the same expectations as had been expressed in the majority opinion, that the 6-cent fare would not be confiscatory.

The remaining two Commissioners specially concurred in the Commission's order "upon the distinct understanding that such fare reduction is to be deemed experimental in character under war-time conditions" (R. 103). They emphasized that "necessary adjustments" would have to be made "should the proposed plan prove ineffective" (R. 104). They stated emphatically (R. 104):

" . . . be it known that we are in disagreement with the majority opinion with respect to certain of the reasoning processes therein noted, as well as to a number of the assumptions and deductions thereof,

and also with reference to the relevancy and the application of some of the cases therein cited in support of the line of reasoning of the majority opinion."

Appellant promptly filed a petition for rehearing (R. 105), pointing out that the order is invalid because made without notice or opportunity for a hearing on the issue of rates; because it is without support in the evidence and is based upon the Commission's unsupported assumptions and expectations; and because it is confiscatory. The petition prayed that appellant be given an opportunity to present evidence on the reasonableness of its rates (R. 112-113).

The petition was denied by the vote of the three members who signed the majority opinion (R. 140).

In accordance with section 67 of the California Public Utilities Act²⁹ appellant filed a petition for a writ of review in the Supreme Court of California, repeating its claims that the order is invalid under the due process clause of the Fourteenth Amendment (R. 1). The writ issued (R. 46, 47) and in response thereto the Commission certified for review the entire record in the case (R. 49). That record is before this Court.

The Supreme Court of California gave only passing mention to appellant's principal contentions. Virtually all of its opinion is devoted to a justification of the use of the figure of \$7,950,000 as appellant's rate base (R. 606-620), a question, as we emphasized below and as we hereafter point out, of subordinate importance in this proceeding. The court intimated approval of the

²⁹Deering's California General Laws, Act 6386, section 67.

Commission's "value of service" theory (R. 621, 622), but held (R. 622):

"The problem of the value of the service, and the correctness of the commission's decision on the consumer interest, do not involve constitutional questions, so long as otherwise the investor or company interest has received adequate consideration by the commission. . . .

. . . It does not appear from the facts in this record that the rate fixed by the commission is so unreasonably low as to call for a declaration that Market Street Railway Company has been deprived of its property without due process of law or without just compensation."

SPECIFICATION OF ERRORS.

Appellant specifies assigned errors Nos. 1 to 11, inclusive (R. 626-629) as the errors intended to be urged.

ARGUMENT.

I.

THE ORDER IS INVALID UNDER THE DUE PROCESS CLAUSE BECAUSE IT WAS ENTERED WITHOUT NOTICE TO APPELLANT THAT ITS RATES WERE UNDER ATTACK AND WITHOUT AFFORDING APPELLANT AN OPPORTUNITY FOR A HEARING ON THE ISSUE OF THE REASONABLENESS OF ITS RATES.

Neither appellees nor the court below deny that procedural due process requires notice and opportunity for hearing, that in an administrative proceeding the defendant is "entitled to be fairly advised of what

the Government proposes and to be heard upon its proposals before it issues its final command," and that the "right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them."

Morgan v. United States, 304 U.S. 1, 18-19;

West Ohio Gas Co. v. Comm'n (No. 1), 294 U.S. 63, 68.

The only dispute is whether this record shows that appellant was accorded these rights.

In this brief we can only summarize the record. This we shall do sufficiently to demonstrate the validity of our contention, though no summary can be as convincing as the record itself. The reading of the transcript of the hearing (in which all exhibits are summarized) will bring conviction that appellant was denied the fundamentals of a fair hearing. Not only was no issue drawn as to the reasonableness of appellant's rates, but the Commission specifically formulated an entirely different issue—the adequacy of appellant's service. It directed appellant to devote its evidence to that issue; confined the testimony of its own witnesses, as they themselves state, to that issue; and over and over again indicated that its order, if any, would deal with that issue.

The proceedings were instituted by the Commission on its own motion (R. 56). "It thereby assumed full responsibility in the premises, including the burden of proof."³⁰ It is true that the order instituting the investigation describes the investigation as one "into the reasonableness

³⁰Concurring opinion of Commissioners Baker and Craemer (R. 104).

of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company" (R. 56, 366). It is true, also, that the Commission's president read the caption at the outset of the hearing (R. 366). But this caption and this order, in broad and conventional form, covering almost every conceivable issue relating to appellant's affairs, were not sufficient in themselves to apprise appellant of any charges against it. They differ in no substantial respect from the order instituting the *Morgan* proceeding, which this Court held did not constitute the "concrete statement of the Government's claims" to which a litigant is entitled (*Morgan v. United States*, 304 U.S. 1, 19). Further, in this case the subsequent proceedings made clear that of the many matters mentioned in the order, appellant's service was the point in issue.

The first day's hearing lasted a couple of hours (R. 366-400). Three Commission witnesses were called. Mr. Hunter identified and summarized a comparative income statement³¹ of appellant and of the San Francisco Municipal Railway (R. 367-374; 376-378). Mr. Donovan identified and summarized Exhibit 2³² consisting of a comparative balance sheet and other financial statements of appellant for the years 1938 to 1942 (R. 374-376). It was then stipulated that appellant's annual reports for the years 1938 to 1942, and monthly reports from 1938 to May, 1943, should be deemed a part of the record (R. 378). Mr. Hall testified concerning the condition of appellant's tracks

³¹Exhibit 1, R. 142-150; in evidence, R. 374.

³²R. 151-158; in evidence, R. 375.

from the standpoint of safety and riding qualities (R. 379-380), its track maintenance methods (R. 380), its equipment, rolling stock, repair methods and operations (R. 381-385), and car loadings (R. 386-388), and its performance in maintaining schedules (R. 388). He identified Exhibits 3 to 6³³ covering these matters. At the conclusion of this testimony, counsel for the Commission asked the witness whether, as a result of his studies, he had "any general comment to make on the service of the Market Street Railway" (R. 391). The witness replied with recommendations (R. 391). Counsel for the Commission then said that the staff had no further evidence at that time, but intended to make additional studies.

Up to this point certainly there was no indication that the Commission was investigating the reasonableness of appellant's rates.

Thereupon the following occurred (R. 393-395):³⁴

"Commissioner Havenner. Has the Company anything to offer at this time?

Mr. Appel. We haven't anything at this time, Mr. Commissioner.

Commissioner Havenner. Mr. Holm, does the City intend to offer any evidence or testimony in this proceeding, or are you prepared to offer anything at this time?

Mr. Holm. No, if the Commission please, we have no thought of presenting anything to do. *I do not know exactly what scope this investigation might*

³³R. 159, 160, 161; in evidence, R. 382, 385, 387.

³⁴Italics in the brief are ours unless otherwise indicated.

take. We do not deem it necessary to make any studies at the present time, at least.

Commissioner Havenner. *Well, of course, this investigation was undertaken with the hope that it might result in some improvement of the public transportation for the people of San Francisco and the investigation will be very broad in its scope and will go to almost every aspect of that question as it affects the operations of the Market Street Railway Company.*

Commissioner Havenner. I would like to ask the staff if they think that the City could participate in this investigation in any way to their advantage?

Mr. Brown. Yes, I think so, very much. *I think there are a great many service matters that could be considered in conjunction with the Company and the City and the Commission. It would not take, probably, very long to consider, I think it would be very helpful if we could have the cooperation of the City.*

Mr. Holm. If you would be good enough, Mr. Brown, to indicate what service studies you would desire the Municipal Railway representatives to undertake I feel certain that they would more than gladly cooperate and supply you that promptly.

Commissioner Clark. I would like to make this observation: It is my opinion as a Commissioner that in discussing this matter the City of San Francisco administrative officers do it not only considering themselves operators of a competitive railroad, you might say, but also, in addition to that, entirely aside from that, as representing the public interest of the City of San Francisco to join with this body in try-

*ing to do everything possible to improve the service, whether that is operation of the two operations from the standpoint of a practical convenience to the public, or not, or whatever it might be, I think that this Railroad Commission, at least, I am as an individual Commissioner, interested in seeing ways and means carried through at the earliest possible date that will result in improving the system for operating * * *"*

Commissioner Sachse then turned to Mr. Kahn, the president of the Market Street Railway, and said (R. 395-396):

"Commissioner Sachse. I think the Commission would be interested, at least I would, Mr. Kahn, in what program, if any, the Railroad has of an improvement of service or putting this unused equipment into service, rehabilitation of those portions of the system that need rehabilitation, and particularly with reference to the deferred maintenance that seems to be in everybody's mind.

A statement or presentation from the Company of what the Company itself proposes to do, aside from anything that the Commission may want to recommend or order later on.

Mr. Kahn. You want a statement now or at the time we present our case?

Commissioner Sachse. I would like at this time, in view of the work ahead, I would like to know what the Company's program or what you propose to present to the Commission now or later.

Mr. Kahn. Well, if the Commission please, I cannot state precisely what our presentation will be; it will depend somewhat upon the exhibits offered in this case by the Commission itself, the Commission's engineers."

Mr. Kahn then discussed a number of matters relating to service, and Commissioner Sachse continued (R. 396-397):

"Commissioner Sachse. * * * Are you making any or do you contemplate making any financial provisions for deferred maintenance?

Mr. Kahn. We have no definite program of setting aside anything for maintenance. We think our first obligation is to discharge our debts; it was money honestly borrowed and we want to honestly repay it. Having gotten our debts out of the way we feel that we will then be in shape to refinance when the war is over or perhaps sooner so that we can improve our service generally, and when I say, 'improve' I mean improve in the broadest sense. That covers both modernization and improvement of present facilities.

Commissioner Sachse. Have you made any estimate of the amount of deferred maintenance or other rehabilitation work, perhaps in steps? What is the most urgent, what is the next most urgent and over what period of time and how much money will be taken for each one of those steps?

Mr. Kahn. Well, I think the most urgent work to be performed is now covered by a contract which we have recently entered into with the City.

Commissioner Havenner. Is that with respect to paving?

Mr. Kahn. Why there is—yes, some paving involved and some other maintenance work involved.

Commissioner Sachse. All this information will be available?

Mr. Kahn. Oh, yes, this is all of record."

Following this the Commissioners addressed a number of inquiries to Mr. Kahn concerning car repairs and manpower problems, and then, speaking of further hearings, the presiding Commissioner said (R. 399):

"Commissioner Havenner. Well, during the recess I discussed this matter with the other members of the Commission and I can state it was the consensus of opinion that we ought not to delay this matter, Mr. Kahn, unreasonably. *The investigation was started, as I stated, in the hope that it might be productive of some improvement in transportation for the people here during this emergency period in particular, and I think it is the sense of the Commission that we ought to proceed as expeditiously as we can with our investigation. If the Engineers and other employees of the Company would be willing to co-operate in some of the studies that we are making we would be delighted to have them do so; * * *.*"

Here in unequivocal terms the Commission formulated the issue, specifically advising appellant what testimony it should be prepared to submit. Not a word was said, not an intimation given, that appellant was to meet a charge that its rates were unreasonable; that the Commission was taking evidence concerning, and contemplated, a rate reduction. On the contrary appellant was led to believe that the Commission had in mind requiring appellant, from its present earnings, to set aside funds for maintenance and rehabilitation after the war. Notice also was fairly given that other methods of improving service were in issue: the Commission intended to go into "almost every aspect of *that* question" (*supra*, p. 23). Appellant was familiar with the provisions of the

California Public Utilities Act giving the Commission broad powers to order improvements in the service and facilities of public utilities.³⁵ No possible question could exist in its mind but that these were the matters under consideration.

On July 15th one more day's testimony was taken (R. 400-476). Commission witnesses still testified. Nothing occurred to change the picture.

Mr. Vensano, director of Public Works of the City and County of San Francisco, submitted a report of the obligations of appellant as to the use and condition of the streets, particularly its paving obligations (R. 401-406).³⁶ The report indicated that it would cost appellant \$1,691,-162 to bring the paving into proper condition (R. 403).

Commission Engineer Mors (R. 407) summarized and identified Exhibit 10.³⁷ Although this exhibit is lengthy, its purpose is fairly summarized by the witness (R. 408):

"The purpose of the report is to present a brief historical summary of the financial results of operation of Market Street Railway Company over the 21 years ending December 31, 1942, with particular reference to the last few years and with some consideration of results for the first few months of 1943."

³⁵These provisions, sections 35, 36, 37 and 42 of the California Public Utilities Act (Deering's California General Laws, Act 6386) are quoted in the Appendix to this brief, p. 31 et seq.

³⁶This report was summarized by the witness and received as Exhibit 7 (R. 405). It is a voluminous document, before this Court as an original exhibit (R. 639).

³⁷Exhibit 10, R. 165-261; in evidence, R. 441

The report is entirely historical. It contains no rate study. The Commission's principal witness, Mr. Hunter, pointed out that neither this report nor any other study made and presented by the Commission analyzes the "rate situation" (R. 467). Much of the report was devoted to comparative studies of appellant and the Municipal line, the interrelation of those two lines being pertinent to any service study. Much also was said about maintenance (R. 412, 435) and depreciation (R. 438). It was noted that the appropriation for depreciation by appellant was insufficient (R. 439-440).

During Mr. Mors' testimony, Mayor Rossi of San Francisco, and Mr. Cahill, Manager of the Public Utilities of San Francisco, arrived at the hearing and were sworn. Mayor Rossi spoke of the efforts of the City to acquire appellant's system (R. 412-418). He was asked if he knew anything that would aid "in taking care of the traffic situation from any adjustment between the operations of the two railways" (R. 415); "that might facilitate operations?" He replied (R. 415):

"I think that there is an honest effort being made to improve the service. No matter what is done you will never be able to solve the problem until you have a unified system, * * *"

Mr. Cahill was asked whether he had "any suggestions to make to the Commission as to how the present traffic situation may be alleviated, bearing in mind that the Market Street Railway is owned privately and the Municipal Railway owned by the City and County" (R. 419). He said that he also believed consolidation of the two roads

was the only proper solution but, if that were impossible, certain other steps might be taken to improve service and aid in the handling of transportation. He enumerated proposed service changes (R. 421-425, 428-429). He was asked about the City's declared policy of a uniform 5-cent fare for mass transportation, and about universal transfers. He answered that "a uniform fare" and a "universal transfer" are "matters merely of price, they do not affect service" (R. 419): that even a free universal transfer or a uniform 5-cent fare would not materially increase the volume of traffic (R. 431):

"No, I do not think it would because I think that under the present financial conditions of the people they have money enough, when they want to go somewhere, to pay the two fares and they do it. They do not refuse to go to 3rd and Townsend from out in the Richmond District because it costs 7 cents on the Market Street and 5 cents on the Municipal. They pay it and go. The traffic, I do not believe, would increase very much."

He suggested certain track and equipment leasing arrangements (R. 421-422, 428-429).

Clearly indicative of what everyone considered to be the subject matter of the hearing were the questions directed to this witness by Mr. Holm, Assistant City Attorney of San Francisco (R. 425):

"Well, for an immediate solving of this problem, *an order of this Commission*, then, directing the Market Street Railway Company to enter into a fair contract with the City for the use of the inner rails by the 'K' and 'L' lines would be a great help, wouldn't it Mr. Cahill?"

and by one of the Commissioners (R. 429):

"Really what I meant to ask you was, Mr. Cahill, *what do you think this Commission could do* to put this idle equipment, this unused equipment, assuming that it can be necessarily and properly used, into operation?"

Mr. Cahill also stated that at the request of the Commission he had brought with him copies of resolutions of appellant's directors authorizing the sale of its properties to the City and County of San Francisco (R. 432-434). These were introduced as exhibits³⁸ without comment by any Commissioner, Commission counsel, or anyone else. No possible significance could have been given to them, in the light of Mr. Cahill's and Mayor Rossi's testimony, other than as steps in the history of San Francisco's effort to arrive at a unified operation of the two lines. Emphasizing this is the fact that later, at the opening of appellant's case, counsel for appellant moved to strike these exhibits as "immaterial to any inquiry pending before the Commission and not germane to any issue that has been presented" (R. 481). The president of the Commission merely stated that the motion would be taken under consideration (R. 481) and thereafter denied it on the general ground that "The Commission, under the authority of the Public Utilities Act, pursues a very liberal policy in allowing testimony to go in the record. * * * so I think the motion made by Mr. Appel * * * will * * * be denied" (R. 591). No word was said, no hint given, that the Commission had asked Mr. Cahill to bring these exhibits so that it might have them incon-

³⁸Exhibits 8 and 9, R. 163, 164; in evidence, R. 433, 434.

suspiciously in the record to use, not as evidence to support a service order, but as evidence of a rate base. Appellant, led to believe that these exhibits, if relevant at all, bore merely upon service matters, had no opportunity to cross-examine, explain, or offer supplementing testimony. Unaware of rate implications, it had no chance to show that these proposed sales were never submitted to or approved by its stockholder; no chance to show that the figures arrived at had been based upon a capitalization of earnings and therefore had no evidentiary weight for rate-making purposes; no chance to show the effect upon the purchase figure of the concurrent cancellation of appellant's obligation to the City and County of San Francisco amounting to nearly \$1,700,000,³⁹ or whether interest rates on deferred payments affected the proposed price; no chance to submit other evidence of the value of its property.

The next witness was Mr. Hall of the Commission's staff (R. 441-456). His testimony, and the exhibits he summarized and identified,⁴⁰ related to service: manpower, unused equipment, schedules, load factors, repairs (R. 441-456). Asked by one of the Commissioners whether he would agree to give the Commission the benefit of his recommendations for improvement, he expressed the opinion that closer supervision should be had on the

³⁹See *supra*, p. 27.

⁴⁰Exhibits 11-16. Exhibit 11 (R. 262; in evidence, R. 448) contains tables and charts relating to manpower and service; Exhibits 12-16 (original exhibits in this Court, R. 639-640; in evidence, R. 451, 452, 453) are three photographs of passengers boarding streetcars on Market Street, San Francisco, showing crowded conditions, and a photograph of appellant's equipment in storage.

Market Street system; that if additional manpower could be obtained there would be a general improvement in the maintenance and operation of appellant's equipment (R. 454-455).

The Commission closed its case with a witness whose testimony leaves no doubt as to the scope of the hearing. Mr. Hunter, chief of the Engineering Division of the Commission's Transportation Department, testified that the principal exhibits presented on behalf of the Commission had been made under his supervision; that he had "arrived at certain conclusions and recommendations as a result of the various studies"; that these were embodied in a report he had prepared and which was introduced as Exhibit 17¹¹ (R. 456). Summarizing the Commission's whole case and stating his conception of the issues to which the hearing had been addressed, he said (R. 456, 457):

"I think our exhibit introduced in this record support the conclusion that the service on the Market Street Railway should be improved. In our study we have attempted to, first, test the service on the ground through other information and then, from that information, attempt to draw conclusions.

Engineers Mors and Hall have presented here today exhibits which I think support the conclusions and recommendations in this report, therefore, I will proceed to pass to the conclusion as I see it. I will repeat that I think the service on the Market Street Railway should be improved even under war time conditions."

¹¹Exhibit 17, R. 279; in evidence, R. 472.

Mr. Hunter's report is entitled, "Report Dealing With Service on Market Street Railway."⁴² Its subject matter is given as:

"Conclusions and Recommendations Looking Toward a Betterment in the Service Provided by the Market Street Railway Under War Time Conditions, in Confection with the Investigation by the Commission on Its Own Motion In Case 4680. To Be Presented at the Hearing in San Francisco, July 15, 1943."⁴³

Its recommendations relate to field supervision, manpower, the institution of a skip-stop program, an operating agreement between appellant and the Municipal system, and the creation of a fund, in which appellant would be required to place its gross revenues less certain limited operating expenses, to be used to pick up deferred maintenance after the war (R. 468-470). The recommendations also included a statement that "The value of the service should be in keeping with the rates."⁴⁴ Of this Mr. Hunter said (R. 467):

"I next refer to the matter of the value of the service. *Although this study and investigation does not analyze the rate situation* I do not think we cannot entirely close our eyes to the value of the service. . . . the passengers are getting less for their money today than they were when they got better transportation. But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service."

⁴²Exhibit 17, R. 279; in evidence, R. 472.

⁴³Ibid.

⁴⁴Exhibit 17, R. 279, 286; in evidence, R. 472.

Bearing in mind that the Commission's later rate order is based in part on the claim that the rate should be reduced because the service has become poorer, it will be noted that Mr. Hunter's recommendation was, "The value of the service should be in keeping with the rates" (R. 286), not, "the rates should be in keeping with the value of the service." He was merely emphasizing his view that service improvements should be effected. When he was asked, briefly, whether he meant fares should be reduced when quality of service deteriorates, he explained (R. 492, 493):⁴⁵

"A. Of course, the service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one. But, obviously, as the service declines that should be recognized in establishing any rate, but to determine just what a rate should be on a particular service, you could not do it without considering all the other elements that go in. There are many.

Mr. Beck. If the value of service under the 5-cent fare was greater than it is now is it your opinion that the fare now should be below 5 cents?

A. I think, Mr. Beck, in figuring fares you will have to consider all of the elements. I could not answer that question, I would not say that because the service was poorer now than when they had the 5 cents the present fare should be less than 5 cents. There might be many other elements to consider.

Q. In other words, value of service is a very hard thing to evaluate?

A. That is correct."

⁴⁵And see R. 468.

The final hearing was on September 15, 1943. After a patron made a general complaint about service (R. 476-479), and after Mr. Hall, recalled (R. 480), identified and commented on a further exhibit relating to service,⁴⁶ appellant opened its case with cross-examination of Mr. Hunter. The questions and testimony related to service (R. 482-509). Mr. Jenkins, a Navy officer, testified that appellant's service to Naval establishments is good (R. 510-518).

Mr. Kahn, appellant's president, took the stand (R. 518). In view of the criticisms of service, he discussed briefly the financial difficulties of the company (R. 519-521). He testified regarding union demands, then before the Labor Board, that would cost the company \$1,250,000 a year (R. 522, 555, 563). He showed that since 1937, extension of the Municipal System facilities had diverted a great deal of appellant's traffic.⁴⁷ He discussed Mr. Cahill's proposals for leasing appellant's facilities to the City to alleviate traffic conditions (R. 524-526). He discussed a modernization program and the acquisition of busses and trolley coaches (R. 558-561). He discussed the proposals for consolidated operation (R. 561-562). His discussion of rates and revenues was general and purely historical (R. 526-532, 538-540). Its superficial and fragmentary nature rebuts any assumption that it was designed to repel an attack on rates. He responded to a number of questions by the Commission regarding trends of past traffic service and expense (R. 533-537). He told the Com-

⁴⁶Exhibit 18, "Flow of Street Car and Bus Traffic," R. 286A; in evidence, R. 480.

⁴⁷R. 523-524; Exhibit 21, R. 306, in evidence, R. 523.

mission that an increase in traffic would not change his standards of service, but would simply involve additional facilities and proportionate increase in expense without change in the load-factor (R. 532-537). He allowed Mr. Cahill to interrupt his testimony and discuss further the proposed leasing arrangements with the City (R. 541-554). He closed his testimony with assurance to the Commission that as soon as conditions permit he intends to continue the company's modernization program, and that his stockholders are thoroughly in accord with his recommendations for improvement in service (R. 560, 564, 565).

Appellant's last and principal witness was Mr. Newton, vice president in charge of operations. All of his testimony related to the company's service.⁴⁸

Notwithstanding this record, the court below held that appellant had adequate notice and opportunity for hearing on the reasonableness of its rates (R. 599-601). It sought to justify this conclusion on the ground that the record contains "voluminous" exhibits and "three volumes of transcribed testimony," and that some of this evidence relates to the present state of appellant's properties, to its financial condition and to its "various rate structures" (R. 600-601). As we have seen, such evidence was all historical. It was relevant to the issue of service and was introduced on that issue. The fact that this same evidence might also be relevant in a rate hearing is beside the point. For example, depreciation practices and operating expenses were here viewed from the

⁴⁸R. 566-590. And see the exhibits prepared by Mr. Newton: Exhibits 26-32, R. 332, 339, 341, 356, 363, 364; in evidence, R. 567, 572, 575, 584.

standpoint of the company's maintenance, replacements, and other service obligations.

The court also attempted to support its holding by saying that at the commencement of the proceedings Commission witness Hunter "gave a resume of the matters for investigation, which included * * * studies on rate base figures * * *" (R. 600). Mr. Hunter did not give a resume of the matters for investigation. He enumerated for the Commission the data possessed by its staff and the studies the staff expected to make some time in the future (R. 370). Further, in an effort to justify its ruling, the court said, "The fact that the * * * rate base studies were required to be produced by the Commission as a part of the record was sufficient to give the company ample warning that the commission was seriously proceeding into an investigation of the reasonableness of the existing rate" (R. 600-601). It is difficult to understand this statement. No rate base studies were required to be produced. No rate base studies were produced. As we have shown, Mr. Hunter, the Commission's Chief Engineer who made the introductory statement above quoted, expressly pointed out at the close of the Commission's case that its evidence had been devoted to service matters and that this "investigation does not analyze the rate situation" (R. 467; supra, p. 33).

The hearing required by the due process clause is not one which is artificially spelled out after the order is made from the mere volume of the record, from bits of evidence separated from their context, from occasional passing statements at the trial. It is a hearing which fully and fairly informs the litigant in the course of trial.

It is a hearing at which the administrative tribunal does not formulate one issue and then decide another. Such a hearing was denied appellant. The Commission's order is invalid.

II.

THE ORDER IS INVALID UNDER THE DUE PROCESS CLAUSE BECAUSE IT IS UNSUPPORTED BY EVIDENCE AND IS BASED UPON THE COMMISSION'S SPECULATION AND CONJECTURE.

The hearing having been conducted as above set forth, it is not surprising that the Commission's order is without support in the evidence. This fact, ordinarily somewhat difficult to demonstrate on a large record, is sharply focused in this case because of the openly expressed claim of the Commission that it has the power to act without evidence, and the openly expressed approval of that procedure by the court below (see *infra*, p. 46).

Earlier in this brief we have described in part the method by which the Commission arrived at its finding that appellant would receive a reasonable rate of return under the 6-cent fare (*supra*, pp. 15-16). We now quote its findings in this regard. It first purported to find the 7-cent fare unreasonable (R. 87-88):

"In the eight months' period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775, compared with \$4,737,856 for the same period in 1942, an increase of twenty per cent. On this basis the total for the full year of 1943 under a seven-cent fare may be expected to be about \$8,700,000. If operating expenses in-

creased to \$7,940,000, including \$750,000 for depreciation and \$590,000 for taxes, the net operating revenues would be \$760,000, which is a return of 9.6% on \$7,950,000, the price at which the company offered to sell its properties to San Francisco in 1942 and again in 1943. If a depreciation allowance is made of \$500,000, as set up by the company in previous years, the net operating revenues would be \$1,010,000, or a return of 12.7% on said \$7,950,000. Both of these rates are excessive and unjustified by the present service."⁴⁹

No one of these total revenue or expense figures appears in the record. No one can be derived from evidence in the record. There is no evidence of appellant's operating revenues for the first eight months of 1943. To obtain the figure of \$5,689,775 the Commission consulted reports not in the record (see *infra*, p. 52). Nor is there evidence of appellant's estimated operating revenues or expenses for the balance of the year. Indeed, the Commission quite frankly gives these figures as its own expectations.

We turn to the more important finding as to appellant's return under the 6-cent fare (R. 90, 91):

"The record clearly indicates that the number of revenue passengers will be substantially greater with a lower fare than with the present seven-cent rate.

• • •

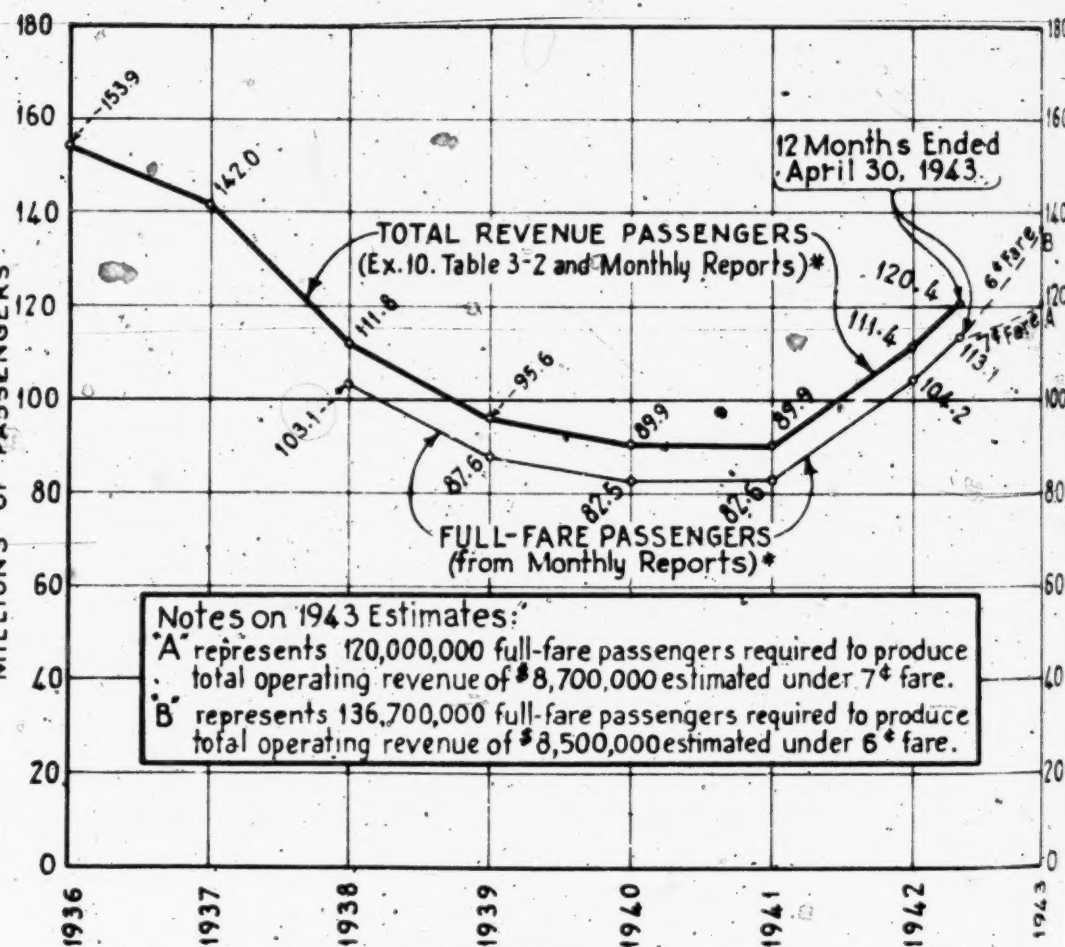
⁴⁹The uncontradicted testimony of the Commission's witness Mors was that a \$500,000 depreciation allowance is inadequate; that the amount should be approximately \$780,000 (R. 102; Exhibit 10, R. 165, 248-252; in evidence, R. 441). Appellant increased its depreciation expense for 1943 to \$750,000 (R. 102). The Commission in its decision allowed \$750,000 as the proper charge (R. 91).

• • • With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions."

These figures of revenue and expense appear nowhere in the record and can be derived from no figures in the record. It seems fairly clear from what the Commission says in its decision that they were arrived at upon the basis of some expectation of increase in traffic. But this amount is not stated. It was not until the Commission filed its answer to appellant's petition to the court below for a writ of review, that appellant was advised that the Commission had "*based its estimate upon an expectation of [an] • • • increase of approximately 10 per cent*" (R. 20, 40; italics in original). As we shall show, the Commission later was compelled to revise even this delayed computation and admit that its expectation must have been of an increase in traffic of 13.91 per cent. By way of contrast, it will be observed that its expectation of the increase in operating expense was less than 1 per cent (see *infra*, p. 44).

In regard to this whole situation, no argument of ours can as clearly demonstrate the lack of due process in the Commission's procedure as the explanation and defense of that procedure presented by the Commission to the court below. In its brief in that court it said:

MARKET STREET RAILWAY COMPANY TREND OF REVENUE PASSENGERS 1936 TO 1942 AND 1943 ESTIMATED AT 7-CENT FARE AND 6-CENT FARE



* The company's monthly reports from 1938 to April 1943 are a part of the record by stipulation (Transcript, page 19)

HISTORY OF FARES

1936 5¢ fare, free transfer

1937 { January 1 to July 5: 5¢ fare, free transfer.
 { July 6 to December 31: 5¢ fare, 2¢ transfer.

1938 { January 1 to May 28: 5¢ fare, 2¢ transfer.
 { May 29 to December 31: 7¢ or 4 tokens for 25¢, free transfer.

"With respect to the basis of the Commission's revenue estimates, the Court is respectfully referred to the diagram opposite this page,^{19a} on which the total revenue passengers of petitioner are plotted from 1936 to 1942, inclusive, showing both the trend of traffic and the actual figures for each of those years.

* * * The diagram also shows in dotted lines the estimated full-fare passengers for the entire year 1943 with, respectively, the 7-cent fare and the 6-cent fare in effect. *These dotted lines represent the estimates made by the Commission.*

The Commission concluded that with the 7-cent fare in effect for the full year 1943 approximately 120,000,000 full-fare passengers would make use of petitioner's lines. This number of passengers would produce $(120,000,000 \times 7 \text{ cents})$ \$8,400,000 gross revenue. * * * The additional \$300,000 would be contributed, in the same proportions as in the past, by revenues other than from the 7-cent fare. * * *

○ In reaching this conclusion the Commission obviously made a conservative and reasonable estimate. The upward trend of full-fare passengers is clearly shown when the years 1941 and 1942 are compared and that upward trend is even sharper for the 12-month period ended April 30, 1943. Based on this evidence in the record, *the Commission could properly and reasonably assume that this trend would hold throughout the year 1943 and for a reasonable period in the immediate future.* The Commission, however, took a more conservative attitude and concluded that the number of full-fare passengers for

^{19a}The diagram referred to is the one copied on the opposite page of this brief.

the year 1943 would amount to only 120,000,000. This estimate of full-fare passengers is the Commission's own estimate and cannot therefore appear in the record, and neither is reference made to that particular figure in the decision. * * *

* * * The Commission's allowance of \$7,940,000 for operating expenses in 1943 was estimated in a manner similar to its estimate of traffic and of revenue as above referred to.

The Commission's conclusion as to the number of full-fare passengers that would make use of petitioner's service under a 6-cent fare is shown at point B of the preceding diagram and represents 136,700,000 passengers. This number, at a 6-cent fare, will produce an operating revenue of approximately \$8,200,000. The Commission's conclusion was that with a 6-cent fare the total annual operating revenue of petitioner would amount to \$8,500,000, a difference of \$300,000, which is again accounted for by revenues from other than 6-cent fares. The difference between the estimated number of passengers under the 6-cent fare and the number estimated under the 7-cent fare, it will be noted, is due to the stimulation of traffic resulting from the decrease in fare, and is comparable to the loss of passengers in 1937, 1938 and 1939 when the fares were progressively increased from 5 cents to 7 cents.

* * * * * * *

With reference to petitioner's allegation that 'evidence is entirely absent' concerning an estimate of expense of handling the traffic under a 6-cent fare, the record contains the exact expense figures for all the years 1922 to 1942, inclusive, and also for the 12-month period ended April 30, 1943. * * * The Com-

mission made an allowance for operating expenses of \$8,000,000 for handling the traffic that might be expected under the 6-cent fare, an increase in operating expenses of \$1,500,000 in round numbers, over and above the actual figure for 1942.

The Commission made no finespun estimates. They were not necessary. It concerned itself solely with two questions: first, how much traffic (how many car riders and bus riders) would there be; second, what would it cost to haul such traffic? *If the number of riders is known or estimated, the record provides an almost exact basis for determining the revenue that will be produced by such riders (more than 95 per cent of petitioner's revenue has been produced by full-fare passengers). The number of riders in all of the years of the recent past is definitely known and shown in the record under the 5-cent fare, under the increases granted by the Commission in 1937 and 1938, and under the straight 7-cent fare since 1939. The Commission encountered no difficulty in reaching a reasonable conclusion of what might be expected in the way of traffic and revenue, in round numbers, during an immediate future 12-month period. The cost of handling the existing traffic in the immediate and more distant past is fully shown in the voluminous record. The Commission made a substantial and liberal allowance for increased expenses.*

It will thus be seen that the Commission claims to have derived its unsupported expectation of appellant's revenues under the 6-cent fare from its unsupported expectation that appellant would enjoy an increase of 13.91 per cent in full-fare San Francisco passengers (excluding all passengers on the suburban cars and all passengers travel-

ing on school and excursion passes), an increase of 16,700,000 full-fare San Francisco passengers a year! Paraphrasing this Court's opinion in *West Ohio Gas Co. v. Comm'n* (No. 1) 294 U.S. 63, 68, the Commission might with as much reason have assumed an increase of 5 per cent, or of 8 per cent, or of 15 per cent, or of any other figure. "This was wholly arbitrary" (294 U.S., 68).

But even more startling is its expectation with respect to operating expenses, an expectation without any support whatever, except the Commission's conception of what is "a substantial and liberal allowance." With this greatly increased load, the Commission's expectation was that operating expenses would increase less than 1 per cent. In other words, the Commission proceeded upon the assumption that it costs appellant \$7,940,000 (R. 87) to haul 120,000,000 passengers a year, that is, at the rate of 6.616 cents per passenger (an amount, it will be noted, in excess of the 6-cent fare ordered), but that it could haul 16,700,000 additional passengers at a total cost of \$60,000, or .359 cents per passenger, a difference of 1742 per cent. If an expert witness were so to testify, his testimony would be incredible on its face. But there is no such testimony. The only testimony bearing on the point is that, in the normal course of transportation service, as traffic increases, car hours increase,⁵⁰ with an attendant increase in expense.

Furthermore, all the Commission's expectations were arrived at without giving any consideration to past or future allocation of traffic, revenue and expense between

⁵⁰R. 536-537.

the service rendered to the San Francisco patrons whose fare was reduced, and that rendered to suburban patrons on the San Mateo line. There is no evidence in the record, there is not even an expressed expectation, allocating plant and expense between the San Francisco and suburban lines. There is thus no basis in the record, not even in an expressed expectation, for any test of the reasonableness of the ordered rate.

The Commission's expectations of future revenue, future expense and future traffic form the very foundation upon which the order rests. As the record shows, and as is demonstrated by the Commission's own statement above, they were made without evidence. The figures for traffic, revenue and expense under the existing 7-cent fare up to the effective date of the Commission's order were unsupported expectations; the figures for the ordered 6-cent fare were expectations upon expectations. In its petition for rehearing before the Commission and in argument in support of that petition appellant pointed out the many factors which enter into arriving at reasonable estimates of passenger traffic; the many factors which differentiate the present war years from the years 1937 and 1938 when the former change in fares occurred; the many factors which differentiate the situation then existing, when the fare increase ended the uniform 5-cent fare on both lines, and the situation which may be expected under a rate structure which still retains a differential of one cent between the two lines; the many factors which enter into arriving at estimates of expense, particularly under such assumed radical changes of condition as an increase in traffic of nearly 17,000,000 passengers, when equipment

and manpower are already strained to the utmost because of war conditions.^{50a} And appellant urged that such matters are properly the subject of expert testimony, subject to cross-examination, explanation and rebuttal, from which testimony the Commission, using its expert judgment, can arrive at reasonable and supported estimates. But the Commission considered that its function goes beyond the use of expert *judgment*; it asserted the right to use its expert *knowledge* in supplying missing facts.

And the Supreme Court of California expressly approved the Commission's procedure, holding that the Commission was not required to act upon evidence, but could resort to its own "experience" and "data at hand" to supply facts essential to the validity of its order (R. 620):

"The commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable future operating revenues, expenses, and other costs."

This ruling is contrary to the most fundamental concepts of procedural due process of law.⁵¹

^{50a}Compare the statement in the concurring opinion of Commissioners Baker and Craemer (R. 103-104):

"Such increase in the volume of traffic, of course, will necessitate an increase in the frequency of service, which, in turn, will require both additional equipment and additional manpower, with attendant increase in the cost of operations."

⁵¹• • • we are concerned only with the question of procedural due process, that is, whether the Commission in its procedure, as distinguished from the effect of its order upon respondent's property rights, failed to satisfy the requirements of the Federal Constitution • • • There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the

As this Court said in *Ohio Bell Tel. Co. v. Comm'n*, 301 U.S. 292, 300-302:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record.

An attempt was made by the Commission and again by the state court to uphold this decision without evidence as an instance of judicial notice. Indeed, decisions of this court were cited * * * as giving support to the new doctrine that the values of land and labor and buildings and equipment, with all their yearly fluctuations, no longer call for evidence. Our

Commission must act upon evidence and not arbitrarily" (*Railroad Commission v. Pacific Gas & Electric Co.*, 302 U.S. 388, 392, 393).

"There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be treated as evidence which is not introduced as such * * *. Facts and circumstances which ought to be considered must not be excluded. Facts and circumstances must not be considered which should not legally influence the conclusion. Findings based on the evidence must embrace the basic facts which are needed to sustain the order

The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action" (*Morgan v. United States*, 298 U.S. 468, 480).

"Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. * * *. Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so

opinions have been much misread if they have been thought to point that way. Courts take judicial notice of matters of common knowledge. * * * They take judicial notice that there has been a depression, and that a decline of market values is one of its concomitants. * * * *How great the decline has been for this industry or that, for one material or another, in this year or the next, can be known only to the experts, who may even differ among themselves.* For illustration, a court takes judicial notice of the fact that Confederate money depreciated in value during the war between the states * * * but not of the extent of the depreciation at a given time and place. * * * The distinction is the more important in cases where as here the extent of the fluctuations is not collaterally involved but is the very point in issue. * * *

What was done by the Commission is subject, however, to an objection even deeper. * * * There has

freely, that the 'inexorable safeguard' * * * of a fair and open hearing be maintained in its integrity. * * * The right to such a hearing is one of 'the rudiments of fair play' * * * assured to every litigant by the Fourteenth Amendment as a minimal requirement. * * * There can be no compromise of the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored" (*Ohio Bell Tel. Co. v. Comm'n*, 301 U.S. 292, 304-305).

"A finding without evidence is arbitrary and baseless. And if the * * * contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government * * *. Such authority, however beneficially exercised in one case, could be injuriously exercised in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power" (*Int. Com. Comm. v. Louis. & Nash R.R.*, 227 U.S. 88, 91).

"The basic elements of such a hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence" (*Carter v. Kubler*, 320 U.S. 243, 247).

been more than an expansion of the concept of notoriety beyond reasonable limits. From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion.”

The Commission cited *Clark's Ferry Co. v. Comm'n*, 291 U.S. 227, as authority for the proposition that, without evidence, it could “forecast into the future what the traffic was going to be * * *” (R. 128). This is another example of an opinion of this Court “much misread.” In the *Clark's Ferry* case, this Court approved a tentative schedule of rates based upon evidence taken at a full and fair hearing. The reports of that case expressly disclose that expert testimony concerning estimated revenues under the order was taken in the proceeding before the Commission.⁵² So, also, in *Driscoll v. Edison Co.*, 307 U.S. 104, quoted by the court below (R. 621), essential estimates were supported by the testimony of experts (see 307 U.S., pp. 118, 119-120).

While the deeper vice of the Commission's ruling is in its procedure, rather than in its result, the fact also is apparent that its expectations are incorrect. We already have pointed out the unsupported and incredible character of its underlying assumptions as to increased traffic and expense (*supra*, p. 44). Other errors are apparent. In the first place, the Commission's expectation that the upward trend of traffic under the 7-cent fare would continue

⁵²See the opinion of the Superior Court of Pennsylvania, 108 Pa.Super.Ct. 49, 165 Atl. 261, 272.

is contrary to experience and to facts of common knowledge. For example, at page 148 of this record appears a chart showing in graph form the number of fare passengers carried by appellant and the Municipal Railway of San Francisco. In 1934 the line of the graph dips rapidly during the general strike and later returns to normal. In 1938 it again dips rapidly with the institution of the 7-cent fare and then levels out. Each of these downward trends and each return or leveling out, is susceptible of explanation. It would have been quite unreasonable in 1938, just before the line reached the bottom of its drop, to speculate that the downward trend would continue without change. Expert testimony would have shown this.

The nature of at least some of the factors the Commission took into consideration in making its speculations is shown in the Commission's decision (R. 89):

"An increased use by the public of all mass transportation facilities must definitely be expected in San Francisco, not only because of further reduction in the gasoline allowance and the declining number of automobiles, but also in view of the certain increase of direct and indirect war activities in this area."

Granting that the Commission might judicially notice general war conditions, the *extent* of the increase in population, of the decline in the number of cars, of the future supply of gasoline and of the probable increase, if any, in the use of transportation facilities, are still facts to be established by the testimony of experts, subject to cross-examination and rebuttal (*Ohio Bell Tel. Co. v. Comm'n*, 301 U.S. 292, 300-302, quoted *supra*, pp. 47-49). And, as this

Court emphasized in the case just cited, "The distinction is the more important in cases where as here the extent of the fluctuations is not collaterally involved but is the very point in issue" (301 U.S., 301).

Moreover, the Commission's speculation as to the "certain" increase of war activities turned out to be wrong.⁵³

The Commission's assumption of a still greater increased traffic under the 6-cent fare is contrary to the record. In these war times appellant cannot get new facilities and those it has are burdened to capacity. Commissioner Sachse in questioning Mr. Kahn asked about "the normal period before the war traffic over-burdened all your transportation facilities, regardless of fare" (R. 539). And much evidence in the record is devoted to discussing—indeed criticizing—the overloaded condition of appellant's cars.⁵⁴ Further, the undisputed testimony is

⁵³California Labor Statistics Bulletins, issued by the Department of Industrial Relations of the State of California show that the number of wage earners in manufacturing industries in the San Francisco Bay Area declined from 274,300 in December, 1943 (immediately following the Commission's decision) to 258,000 in September, 1944 (the month in which appellant's operations ceased).

Bulletin No.	Month	Wage Earners
234	December, 1943	274,300
	January, 1944	268,400
236	February, 1944	266,900
	March, 1944	259,600
238	April, 1944	255,400
	May, 1944	252,600
240	June, 1944	248,400
	July, 1944	252,000
242	August, 1944	258,700
	September, 1944	258,000

⁵⁴Exhibit No. 6, R. 161; in evidence, R. 387; R. 386-388; Exhibit No. 11, R. 262, 272, 273, 277; in evidence, R. 448; R. 445-447.

that under present conditions the 7-cent fare does not discourage riders.⁵⁵

All of the foregoing brings us back to our first point. A rate order has followed a case that was not tried as a rate case and in which the evidence to support a rate order was not produced. The fundamental soundness of the guaranty of notice and opportunity for hearing is illustrated in the result of this proceeding.

III.

THE ORDER IS INVALID UNDER THE DUE PROCESS CLAUSE BECAUSE IT IS BASED ON MATTERS OUTSIDE THE RECORD, SPECIFICALLY UPON DATA TAKEN FROM MONTHLY REPORTS OF APPELLANT WHICH FORM NO PART OF THE RECORD.

In its decision the Commission stated that "In the eight months' period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775 * * *" (R. 87). There is no evidence in the record which shows appellant's operating revenues after May, 1943. In its brief in the court below the Commission stated its position:

"Respondent frankly admits that the figure of \$5,689,775 was taken from petitioner's monthly reports filed with respondent pursuant to the Commission's General Order No. 65. * * * While respondent does not concede that the reference to these monthly re-

⁵⁵Mr. Cahill, quoted supra, p. 29.

Mr. Hunter (R. 467): "• • • the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service."

ports of the petitioner to and including August of 1943 constituted error, nevertheless, should it be held otherwise, it is very obvious that such irregularity or error was harmless and immaterial and that such a situation comes squarely within the rule laid down by the United States Supreme Court in the case of *Railroad Commission v. Pacific Gas and Electric Company*, 302 U.S. 388, 394, 395. If, as has been conclusively shown above, the record supports the reasonableness of the 6-cent fare, it is perfectly immaterial whether or not the Commission may have used some additional figures or may have proceeded upon some erroneous theory so long as the result was correct."

Appellees misread the decision of this Court in the case cited. The question involved here is not substantive due process—whether the rate order is confiscatory—but procedural due process. Under the latter, an administrative order may not be upheld on "facts conceivably known to" the administrative officer "but not put in evidence" (*Chicago Junction Case*, 264 U.S. 258, 263; *Crowell v. Benson*, 285 U.S. 22, 48; *Ohio Bell Tel. Co. v. Comm'n*, 301 U.S. 292, 300; *United States v. Abilene & So. Ry. Co.*, 265 U.S. 274, 286). Administrative officers "cannot act upon their own information" * * *. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal" (*Int. Com. Comm. v. Louis. & Nash. R.R.*, 227 U.S. 88, 93). A fair hearing includes "the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence" (*Carter v. Kubler*, 320 U.S. 243, 247).

In the *Pacific Gas and Electric* case, cited by the Commission, the inquiry was whether the Commission erred in refusing to "consider the fair value of respondent's property," and in fixing the rate base solely upon "the historical cost" (*R.R. Comm. v. Pacific Gas Co.*, 302 U.S. 388, 395). Of this contention this Court said (*ibid.*, pp. 393-394):

"The complaint is not of the absence of these rudiments of fair play but of the method by which the Commission arrived at its result. As to this a fundamental distinction must be observed. While a fair and open hearing must be accorded as an inexorable safeguard, we do not sit as an appellate board of revision but to enforce constitutional rights. *San Diego Land & Town Co. v. Jasper*, 189 U.S. 439, 446. When the rate-making agency of the state gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result, and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met, and the question that remains for this Court, or a lower federal court, is not as to the mere correctness of the method and reasoning adopted by the regulating agency but whether the rates it fixes will result in confiscation."

In its opinion the Court cited *West Ohio Gas Co. v. Comm'n* (No. 1) 294 U.S. 63, 70, where, after the case had been tried and submitted the Commission made an *ex parte* order, without the utility's knowledge, directing that the utility's annual reports be made a part of the record and, on the basis of these reports, made certain findings.

Speaking of the substantive aspects of the order this Court said (294 U.S., p. 70):

"Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern Ry. Co. v. Virginia*, 290 U.S. 190) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error."

But the Court held the order invalid for want of procedural due process (*ibid.*):

"But the weakness of the case for the appellee is that the fundamentals of a fair hearing were not conceded to the company. Opportunity did not exist to supplement or explain the annual reports as to the distribution of the expenses in the neighboring communities, nor did opportunity exist to bring the rates outside of Lima into harmony with the exigencies of a new method of allocation adopted without warning."

If a commission had the power, here claimed, to consider reports forming no part of the record—as the court below held, to base its findings and order on its "experience" and "data at hand"—there would be no occasion for rate hearings. A commission on the basis of reports which utilities are required to file, and on the basis of its own expert knowledge, could as well enter an *ex parte* rate reduction order. The California Commission would assure the utility that it is not without a remedy: it need only show that the order is confiscatory

and the court will set it aside. But on what record? The only "facts" are in the Commission's mind and files.

There is another way to try rate cases—the way in which they have been tried for many years, before appellee and before similar tribunals and in the courts. The facts upon which the Commission acts are introduced in evidence. A properly qualified expert can analyze conditions and express his opinion of future developments. The other side can cross-examine and check the basis of his computations and the assumptions on which he has proceeded. The tribunal before which the witness appears then has evidence upon which it can exercise its judgment and a record upon which a reviewing court can act.⁵⁶

⁵⁶Section 67 of the Public Utilities Act of California (Deering's California General Laws, Act 6386) provides that court review must be on the record made before the Commission:

" . . . the applicant may apply to the Supreme Court of this State for a writ of certiorari or review . . . for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ . . . shall direct the commission to certify its record in the case to the court. . . . No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it."

IV.

IN SO FAR AS THE ORDER IS BASED ON THE SO-CALLED "VALUE OF SERVICE" THEORY IT IS INVALID UNDER THE DUE PROCESS CLAUSE BECAUSE (A) THERE IS NO EVIDENCE JUSTIFYING A RATE REDUCTION ON THIS BASIS, AND (B) A CONFISCATORY RATE CANNOT BE SUSTAINED ON THE THEORY THAT IT IS AN ADEQUATE PRICE FOR THE SERVICE INDEPENDENTLY VALUED.

(a) There is no evidence justifying a rate reduction on the basis of the value of appellant's service.

The only witness who was asked about the value of appellant's service was the Commission's chief witness, Mr. Hunter (R. 492-493) whose testimony on this point has been quoted (*supra*, p. 34). He testified that "service is only one feature in considering a proper rate; you must take into consideration all the elements, that is just one" (R. 42); that "value of service is a very hard thing to evaluate" (R. 493).

The vital portion of appellant's service, that to war industries, was admittedly adequate (R. 75). Nevertheless, the order reduces the rate for this service, as well as others, thereby, of course, tending to deprive appellant of revenue that enables it to render the service. Further, the order reduces only the San Francisco full-fare rate. The character of appellant's service to San Francisco full-fare patrons cannot differ substantially from that rendered to patrons on the San Mateo line and to patrons who use school passes and Sunday passes on the same cars and at the same times as full-fare patrons. There is no evidence of any distinction. Nevertheless, the order reduces only the one rate. The point is, not that appellant complains of an order less drastic than might

have been made, but that the order is clearly without any rational foundation or basis in the evidence.

The Commission ~~does not~~ point to any evidence, and there is none, indicating in dollars and cents the value of appellant's service, but refers instead to general operative and management matters (R. 64-73). It seeks to sustain its decision, in the absence of evidence of the value of appellant's service, by claiming the right to use its own judgment, ascribing various dollar-and-cent values to the various elements it enumerates and thus reaching a result (R. 81-82, 90, 124-125). Yet the Commission's chief engineer and principal witness, and the only witness who testified about the value of appellant's service, conceded the impossibility of putting a value upon service as such (*supra*, p. 34).

In its opinion on rehearing the Commission said (R. 121-122):

“The decision is specific that the character and quality of the service rendered by the company does not justify a rate higher than six cents . . .”

The Commission, however, does not point to evidence by which it reached this 6-cent figure for the value of the service. There is none. If it were open to the Commission to choose some figure without support in the evidence, the figure might just as well have been 5 cents or 15 cents. Its purported finding on value of service falls under the condemnation of all administrative findings that lack evidentiary foundation. *Int. Com. Comm. v. Louis. & Nash, R.R.*, 227 U.S. 88, 91, and other cases cited *supra*, page 46, n. 51.

(b) A confiscatory rate cannot be sustained on the theory that it is an adequate price for the service independently valued.

In support of its theory that a commission may fix a rate based on its conception of "value of service," the Commission cited *Covington &c. Turnpike Co. v. Sandford*, 164 U.S. 578, 596,⁵⁷ and *Smyth v. Ames*, 169 U.S. 466, 546 (R. 77). Those decisions sanctioned the rates on the basis of the value of the company's property. The court used "value of the service" as the equivalent of expenses plus a fair return on the value of property, rather than as some independent valuation to be placed upon service as such. Neither case suggests that "value of service" justifies confiscation. *Spring Val. Waterworks v. City, etc., of San Francisco* (1911) 192 Fed. 137, cited by the court below (R. 622) is also not in point. There the District Judge merely mentioned the *Covington* case (p. 145) for the proposition that "the public cannot be subjected to unreasonable rates, in order simply that stockholders may earn dividends." "Value of service" had nothing to do with the judgment, which set aside as confiscatory the rate ordinance under attack.

The third authority mentioned by the court below, on the value of service theory (R. 622), "Value of service as a Factor in Rate Making," 32 Harvard Law Review 516, holds the opposite of the proposition for which it is cited. The article, by Mr. Edgerton, now Justice of the Court of Appeals for the District of Columbia, concludes (*ibid.*, p. 556):

"In summary: It is frequently said, by eminent courts, commissions, and text-writers, that the value

⁵⁷The Supreme Court of California also cited the *Covington* case to the same point (R. 622).

of a service is entitled to quite as much weight as the cost of the service in the fixing of public-service rates. The decisions do not bear out, but contradict, such statements. The decisions establish that the value of the service—which means substantially public policy—is not a criterion either superior to or coordinate with the cost of the service. This is entirely sound and largely inevitable.”

Earlier decisions of the Commission, upon which it now relies, do not support its present action. In the latest of them, *Coast Valleys G. & E. Company*, 24 C.R.C. 53 (R. 79), the Commission determined a rate based upon valuation figures, etc., and then, considering that the service was bad, allowed a higher return in order that the service might be improved. The *Rogers* (R. 77) and *Lake Hemet* (R. 78) cases do nothing more than cite the *Covington* and *Smyth v. Ames* principles by way of dicta. The ultimate holding in each case was that the respective rates were not confiscatory (cf. 32 Harv. L. Rev. 516, 528).

Decisions which consider the so-called “value of service” theory uniformly hold that it must be rejected as the basis for determining reasonable rates and cannot be invoked to justify a confiscatory rate. As Justice Edgerton’s article points out (32 Harv. L. Rev. 516, 530, 550) the value of service theory is discredited in *Nor. Pac. Ry. v. North Dakota*, 236 U.S. 585, where this Court, after touching on value of service (p. 599) said (p. 604):

“The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and

a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic to which the rate applies, it must be concluded that the State has exceeded its authority."

Lower courts have spoken even more directly to the point. In *Chicago Rys. Co. v. Illinois Commerce Commission* (3 judge court, N. D. Ill. 1922) 277 Fed. 970, involving street car fares reduced by the commission, the court said (pp. 976-977):

"The order of the commission found that at no time since the entry of the 8-cent fare order—have the companies rendered, nor are they now rendering, safe, adequate, or efficient service; that, on the contrary, the service rendered by them has during all said time been, and now is, grossly inadequate and inefficient; * * * and that said companies have not * * * shown any just or reasonable reason * * * for not furnishing adequate and efficient service."

The order then states that the service rendered by the plaintiff companies since November 5, 1920 (the date the 8-cent fare was established), and now being rendered by them, is reasonably worth no more than a 5-cent fare for adults and a 3-cent fare for children.

These findings are entirely beside the question. They might have been very important on a bill by the Attorney General to forfeit the charter of the companies. *They have nothing whatever to do with the operating cost, but are based upon the opinion of the commission that the services actually rendered, no matter at what cost, are worth in reality only 5 cents.* The commission should have ordered whatever changes

in their opinion were proper, and adjusted the rate after the various reforms had been carried out.

At this point it may be well to state that the record shows that the actual operating expenses of the Chicago Surface Lines, comprising wages, taxes, and power, amount to more than 6 cents for every passenger carried. *It may be that the Surface Lines, the plaintiffs here, could improve their business methods; but the Illinois Commerce Commission is not permitted, under the law, to force that improvement by penalizing them with a rate which will not return even the operating expenses, and might, in fact, prevent them from rendering any service at all.*"

To the same effect, are:

Mississippi River Fuel Corp. v. Federal Power Com'n (8th C.C.A. 1941) 121 F. (2d) 159, 164-165;

Telluride Power Co. v. Public Utilities Commission (3 Judge court, D. Utah 1934) 8 F. Supp. 341, 343-344;

Georgia Power & Light Co. v. Georgia Public Serv. Com'n (3 Judge court, N.D. Ga. 1934) 8 F. Supp. 603, 604-605;

Denver Union Stock Yard Co. v. United States (3 Judge court, D. Colo. 1932) 57 F. (2d) 735, 740-741;

State v. Department of Public Works of Washington (1934) 179 Wash. 461, 38 P. (2d) 350, 353;

Wisconsin-Minnesota Light & P. Co. v. Railroad Commission (1924) 183 Wis. 96, 197 N.W. 359, 362;

Duluth St. Ry. Co. v. Railroad Commission (1915) 161 Wis. 245, 152 N.W. 887, 892-893.

Regulatory bodies have ample power to make appropriate orders dealing with service. The statute giving the California Commission these powers has been referred to and is quoted in the appendix to this brief (Appendix, p. 31 et seq.). A reasonable order exercising such powers must be obeyed. But a utility, compelled by law to render service, cannot be required to do so at confiscatory rates. As the court said in *Georgia Power & Light Co. v. Georgia Public Serv. Com'n* (N.D. Ga., 1934) 8 F. Supp. 603, 605:

"If complainant's service is costing more than its worth, we see no remedy but for consumers to find a substitute. It cannot constitutionally be compelled by the state without just compensation."

The soundness of this principle is apparent in the case at bar. As the people of San Francisco have desired a service different from appellant's, they have, since 1912, expanded their municipal lines. The competition of these lines has been the greatest source of appellant's financial difficulties. If the people of San Francisco want service other than appellant's, they have the means available. So long, however, as appellant is compelled to serve them, it cannot be compelled to do so at a loss.⁵⁸

⁵⁸As pointed out above (supra, p. 4), the people of San Francisco have now purchased all of appellant's operative properties and are providing their own service at a 7-cent fare.

V.

THE ORDER IS INVALID UNDER THE DUE PROCESS CLAUSE BECAUSE IT IS CONFISCATORY. IT WILL REDUCE APPELLANT'S REVENUE TO A POINT WHERE APPELLANT WILL BE COMPELLED TO OPERATE AT A LOSS.

Under any test, the order in this case is confiscatory, for it will compel appellant to operate at a loss. It is immaterial, therefore, whether the Commission correctly adopted a figure of \$7,950,000 as the fair value of appellant's property. However, we submit that in so holding the Commission clearly erred. Market or commercial value is not, and cannot be, a test.⁵⁹ What a thing will sell for is determined by its earning power, which, in turn, is determined by its rates.⁶⁰ As this Court said in *Federal Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591, 601:

"The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the

⁵⁹ "For the purpose of public regulation market value can have absolutely no application. . . . What the thing will sell for, of course, is largely determined in the market by its earning power. The earning power of a utility is determined by its rates."

John M. Eschleman (draftsman of the California Public Utilities Act and first President of the California Railroad Commission); "Control of Public Utilities," 2 Cal. L. Rev. 104, 112.

"Commercial or condemnation value depends directly or indirectly upon earning power; but since this depends, in turn, upon the prices charged for the product, such value cannot be used as the basis of rate-making."

John Bauer, Director, The American Public Utilities Bureau, "The Establishment and Administration of a 'Prudent Investment' Rate Base," 53 Yale L. J. 495, 498.

⁶⁰ In fact, as appellant asked leave to show in the proceedings on rehearing before the Commission (see, R. 132, 608, 619-620), the figure of \$7,950,000 was based upon a capitalization of earnings in a study made in connection with the proposed acquisition by the City of appellant's lines.

going enterprise depends on earnings under whatever rates may be anticipated."

Beyond this, the Commission treated the \$7,950,000 as an amount at which appellant had "offered" (R. 88) its property to the City. In fact, there was no offer. The exhibits⁶¹ show there were abortive negotiations, tentative on each side. Appellant's president and board of directors, the Mayor, other city officials, including the Board of Supervisors, agreed, so far as they could. Their tentative agreement, however, was subject on the City's part to a vote of the people,⁶² and on appellant's part to the vote of its shareholders.⁶³ The voters did not give the necessary vote.⁶⁴ The shareholders were never consulted. The events proved nothing. Other factors impeaching these resolutions as evidence of fair value have been stated above (*supra*, p. 31).

The only evidence in the record that has any probative force in showing the fair value of appellant's property is given in the historical data appearing in one of the Commission's exhibits.⁶⁵ This exhibit shows that the book value of appellant's properties is \$41,768,505.20, that the Commission's own historical reproduction cost, adjusted to December 31, 1942, is \$25,343,543, and that appellant's capitalization is \$37,921,323.96 (see *supra*, p. 11). On the Commission's own figure of expected income, the rate of

⁶¹Exhibits 8, 9, R. 163, 164; in evidence, R. 433, 434.

⁶²*Ibid.*

⁶³California Civil Code, §§ 343, 494, 510.

⁶⁴Exhibit 10, R. 165, 176; in evidence, R. 441.

⁶⁵Exhibit 10, R. 165; in evidence, R. 441.

return on these bases would be, respectively, 1.19 per cent, 1.97 per cent, and 1.31 per cent.

If the tests of the *Hope* case⁶⁶ be applied, the order is still confiscatory. The record leaves no doubt⁶⁷ that the return enjoyed by appellant is not "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital"; to "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed" (*Federal Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 605).

But again we emphasize that discussion of rate base in this case is unimportant. The order will compel appellant to operate at a loss. The Commission's figures for operation under the 6-cent fare were: gross operating revenue affected by the order \$8,200,000, other operating revenue \$300,000, or total gross operating revenue \$8,500,000; operating expenses \$8,000,000 (R. 91; supra, pp. 42-43). These figures were based upon an expected increase of 16,700,000 passengers per year over the number carried at the 7-cent fare (supra, pp. 41-42). Multiplied by 6 cents, this gives \$1,002,000 attributable to the increased traffic expected by the Commission. Deducting this figure, which is without support in and is contrary to the evidence, the total gross operating revenue becomes \$7,498,000, or \$502,000 less than the \$8,000,000 operating expenses estimated by the Commission under the 6-cent fare.

An operating loss is still shown even if the operating expenses allowed for the 7-cent fare (without stimulation

⁶⁶*Federal Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591.

⁶⁷See the facts stated at pp. 12-13, supra.

of traffic) be taken. The Commission estimated operating expenses under the 7-cent fare at \$7,940,000 (R. 87). Allowing for no increase in operating expense as a corollary to disallowing the assumed increase in traffic, the figures remain: total gross operating revenue, \$8,500,000, less \$1,002,000 attributable to the unsupported traffic increase, leaves \$7,498,000; applying this against the \$7,940,000 operating expenses produces an operating loss of \$442,000.

Looking at the matter another way and assuming that there may, in fact, be increased traffic at 6 cents amounting to \$1,002,000, a proportionate increase in expenses would be (13.91 per cent of \$7,940,000) \$1,104,454, instead of the \$60,000 allowed by the Commission. Total operating expenses would then be \$9,044,454—changing the Commission's estimated profit of \$500,000 into an operating deficit of \$544,454.

Finally, even if it be assumed that depreciation and taxes remain constant, and the increased expense be computed on \$6,600,000 (\$7,940,000, less \$750,000 depreciation and \$590,000 taxes allowed by the Commission (R. 87)), the figures are: 13.91% of \$6,600,000 is \$918,060, which added to \$7,940,000 gives \$8,858,060 as expenses under the 6-cent fare. Applied against the \$8,500,000 anticipated total operating revenue, this changes the Commission's anticipated net operating revenue of \$500,000 into an operating deficit of \$358,060.

We respectfully submit that the judgment of the Supreme Court of California, affirming the order of the Railroad Commission, is erroneous and should be reversed.

Dated, San Francisco, California,
January 29, 1945.

Respectfully submitted,

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

(Appendix Follows.)



Appendix

EXHIBIT A

(Endorsed): Filed Mar. 8, 1944,

A. V. Haskell, Clerk,

By H.,

S. F. Deputy.

In the Supreme Court of the State of California

IN BANK

S. F. No. 16,988

Market Street Railway Company,

Petitioner,

vs.

**Railroad Commission of the State of California
and Franck R. Havenner, C. C. Baker, Justus
F. Craemer, Richard Sachse and Frank W.
Clark, the members of and constituting The
Railroad Commission of the State of Cali-
fornia,**

Respondents:

**ORDER STAYING AND SUSPENDING DECISION AND
ORDER OF RAILROAD COMMISSION PENDING REVIEW.**

By the Court:

WHEREAS, petitioner, on January 20, 1944, filed its veri-
fied petition praying that this court issue a writ of review

to the Railroad Commission of the State of California to review the decision and order of said Commission made on November 30, 1943, being Decision No. 36,739, in that certain proceeding pending before said Commission, entitled

"In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service and facilities, of the Market Street Railway Company, Case No. 4680";

and

WHEREAS, in said petition, petitioner prayed that this court make its order staying and suspending the operation of said decision and order during the pendency of said writ of review; and

WHEREAS, this court, on February 28, 1944, made an order directing that a writ of review issue, returnable on March 21, 1944, and said writ was issued on March 6, 1944; and

WHEREAS, this court, on February 28, 1944, issued its order granting a temporary stay of said decision and order of the Railroad Commission, and also issued its order directing respondents to show cause, on March 7, 1944, why said decision and order should not be stayed and suspended during the pendency of the review proceeding; and

WHEREAS, this court finds from the verified petition for a writ of review that in the event said decision and order be finally annulled great and irreparable damage will re-

sult to petitioner if said decision and order are not stayed during the pendency of the review proceeding, in that petitioner would be unable to collect the difference between its present fare of seven cents per passenger and the fare of six cents per passenger required to be charged by said decision and order, a difference amounting to a loss of revenue of some \$3,000 a day, which difference petitioner could not recover from patrons paying said reduced fare;

NOW, THEREFORE, IT IS ORDERED that said decision and order of the Railroad Commission, being Decision No. 36,739 in Case No. 4680, issued on November 30, 1943, be and the same hereby are stayed and suspended during the pendency of this review proceeding.

This order staying and suspending said decision and order of the Railroad Commission shall become effective on the execution and filing by petitioner with this court; and the approval by this court, of a bond payable to the People of the State of California in the sum of One Hundred Thousand Dollars (\$100,000) effective as of February 29, 1944. In view of the further conditions imposed upon petitioner by this order, such bond is deemed sufficient in amount and security to enforce the prompt payment by petitioner of all damages caused by the delay in the enforcement of said decision and order of the Commission and of all moneys which any person may be compelled to pay petitioner for transportation, pending review, in excess of the charges fixed by said decision and order of the Commission, and of all moneys payable to the State of California, in the event said decision and order are affirmed.

It is ordered that upon the approval by this court of said \$100,000 bond, effective as of February 29, 1944, the \$50,000 suspending bond on temporary stay, filed herein on February 28, 1944, be and it is hereby exonerated.

Petitioner shall deposit with this court on the first day of each month during the pendency of this review proceeding, beginning on April 1, 1944, a Certificate of Indebtedness $\frac{7}{8}\%$ issued by the United States Government, of the face amount of \$100,000, payable to bearer, to be held by this court as further security to enforce the prompt payment by petitioner of all damages caused by the delay in the enforcement of said decision and order of the Commission and of all moneys any person may be compelled to pay petitioner for transportation pending review in excess of the charges fixed by said decision and order of the Railroad Commission, and of all moneys payable to the State of California, in the event said decision and order are affirmed. In the event said decision and order are annulled by order of this court upon review, such Certificates of Indebtedness so deposited with this court shall be returned to petitioner.

Petitioner shall keep monthly reports and accounts, verified by oath and in form satisfactory to this court, showing the amounts charged or received by petitioner during each month, pending review, in excess of the charges allowed by said decision and order of the Railroad Commission, and shall file such verified reports and accounts with the court and the Railroad Commission within one week following the month for which such reports and accounts are rendered.

Petitioner shall further offer, without a request or demand therefor, to each of its cash and token patrons, during the effective period of this stay, a nontransferable refund coupon or slip stating that the fare collected exceeds by one cent the fare prescribed by the Railroad Commission, and that the person given such refund coupon or slip will be entitled to a refund in the amount of one cent for each such coupon or slip, in the event said decision and order are affirmed.

Petitioner shall post placards in a conspicuous place in each street car or bus operated by petitioner, which placards shall advise the public of the pendency of the review proceeding, and shall contain in substance the information to be set forth in the refund coupons or slips hereinabove mentioned.

In the event that said decision and order of the Railroad Commission are affirmed, petitioner shall so advise the public by appropriate advertisement of such fact at least once in each of four daily newspapers published in San Francisco, and also by the posting of appropriate placards in each street car or bus operated by petitioner for a period of sixty (60) consecutive days. Said advertisements and placards shall state that refund coupons or slips theretofore issued may be presented at petitioner's offices for refund of the amount charged in excess of the fare prescribed by the Railroad Commission, and such other information as this court may direct.

In the event that this court finally affirms said decision and order of the Railroad Commission, and in the further event that the persons entitled to a refund of the excess

charges collected by petitioner during this review proceeding do not claim all of such excess charges or moneys within six months after final decision of this court, the State shall be entitled to all such excess charges or moneys which petitioner has unsuccessfully attempted to refund, to be paid to it under such terms and conditions as the court may hereafter prescribe.

Acceptance by petitioner of the benefits of the stay hereby ordered shall be deemed an acceptance of and a consent to the terms and conditions prescribed herein.

This court retains jurisdiction to alter, amend, modify or supersede this order, on motion of either party, or on its own motion, as the interests of justice may require.

Dated, March 8, 1944.

Gibson, Chief Justice.

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of January, A. D. 1945.

(Seal)

A. V. Haskell, Clerk,

By L. F. White,

Deputy Clerk.

EXHIBIT B**OFFICE OF THE CLERK****SUPREME COURT OF CALIFORNIA****S. F. 16,988****Re: Market Street Railway Co.,****vs.****Railroad Commission of the State
of California, etc., et al.,**

I, A. V. Haskell, Clerk of the Supreme Court, do hereby
certify that the deposits made by the Market Street Rail-
way Company, are as follows:

- 6—\$100,000. United States certificates of indebtedness,
7/8%, series H-1945, dated 12/1/44, due 12/1/45.
\$875.00, Cashier's check dated 12-8-44, payable to
Supreme Court of California.
- \$1962.93, Cashier's Check dated 12-19-44 payable to
Supreme Court of California.
- \$481.60, Cashier's check made payable to Supreme
Court of California, dated 10-16-44.

A. V. Haskell, Clerk,

By I. M. Johnson,

Chief Deputy.

Subscribed and sworn to before me this 15th day of
January, 1945.

(Seal)

S. C. Shenk,

Deputy Clerk.

EXHIBIT C**CONTRACT****FOR PURCHASE AND ACQUISITION OF
OPERATIVE PROPERTIES OF
MARKET STREET RAILWAY COMPANY**

THIS CONTRACT, entered into this 14th day of September, 1944, between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, first party, hereinafter called "City", and MARKET STREET RAILWAY COMPANY, a California corporation, second party, hereinafter called "Company",

RECITALS:

1. At a special election held in the City and County of San Francisco, State of California, on May 16, 1944, a majority of the qualified voters of City voted to amend the Charter of City by adding thereto a new section numbered 119.1, providing a plan for the purchase and acquisition of the operative properties of Company by City.

2. On June 7, 1944, the Legislature of the State of California, at a special session thereof, approved said amendment, which was filed with the Secretary of State June 9, 1944, and said Section 119.1 became and is now a part of the Charter of City.

3. On July 27, 1944, the Board of Directors of Company authorized by resolution, a copy of which is attached hereto, the sale of the operative properties of Company to City, pursuant to and in the manner set forth in said Section 119.1 of the Charter of City, for the sum of \$7,500,000., payable as in said section provided.

4. On August 3, 1944, by vote of the stockholders entitled to exercise more than two-thirds of the voting

power of Company, said stockholders by resolution, a copy of which is attached hereto, approved and consented to the sale of the operative properties of Company to City, pursuant to and in the manner set forth in said Section 119.1 of the Charter of City, for the sum of \$7,500,000., payable as in said section provided.

5. The Public Utilities Commission of City, on the advice and approval of the Mayor, has agreed with Company upon the terms and conditions for the purchase and acquisition of said operative properties of Company by City, pursuant to and in the manner set forth in said Section 119.1 of the Charter of City, for the sum of \$7,500,000., payable by City to Company as in said section provided.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED as follows:

1. City agrees to purchase and acquire the operative properties of Company, which properties are generally described in a list attached hereto, although said properties are not limited to the descriptions therein contained but shall include all operative properties of Company. Company agrees to sell and transfer to City said operative properties, pursuant to and in accordance with all of the terms and conditions set forth in Section 119.1 of the Charter of City, for the sum of \$7,500,000., whereof \$2,000,000. shall be paid forthwith from surplus in the funds of the existing Municipal Railway of City, and City is obligated to pay the balance of \$5,500,000. out of earnings of the combined operations of the City and Company railway systems or otherwise as provided in said Section 119.1 of the Charter of City. In addition to the annual

payment provided for in Section 119.1 of the Charter, City may make installment payments at any other time at the option of City.

2. Any unpaid balance of said purchase price of \$7,500,000. shall bear interest at the rate of four per cent (4%) per annum, payable annually.

3. Said Section 119.1 of the Charter of City as it exists on the date hereof, and not otherwise, is hereby referred to and made a part hereof and a copy attached hereto.

4. On September 29, 1944, at the hour of 5 o'clock A.M. Pacific War Time of said day, all of the operative properties of Company, free and clear of all claims, liens and encumbrances, located in the City and County of San Francisco and in the County of San Mateo, State of California, shall, upon the performance by City and Company of all matters and things required by City and Company to be done and performed by them respectively; and upon the initial payment of said sum of \$2,000,000. by City to Company, be transferred to and will thereupon be owned and operated exclusively by City as the property of City, and City will after said hour of 5 o'clock A.M. Pacific War Time of September 29, 1944, assume all obligations of such ownership and operation of said operative properties by City, and Company will at said time be relieved from any and all obligations in connection with the said operative properties and the operation thereof; provided, however, that City does not assume any liability for and will not undertake the defense or payment of claims of any kind or character against Company arising from the ownership or operation of said operative properties by Company prior

to 5 o'clock A.M. Pacific War Time of September 29, 1944, including, but not limiting the same to, damages for injuries to persons, damages for death, injuries to or death of Company employees, and damages to property.

5. At said hour of 5 o'clock A.M. Pacific War Time of September 29, 1944, Company will surrender for cancellation and City will cancel Company's existing operating permit, whereupon all rights, privileges and obligations of Company under and by virtue of said operating permit, or any other franchises, permits or licenses granted by City to Company, shall be terminated and cancelled, and Company shall thereby and thereafter be discharged and relieved from any and all obligations to City thereunder.

6. Upon payment of said \$2,000,000. by City to Company and the execution of proper instruments of conveyance, Company agrees to transfer a good and merchantable title to said operative properties, free and clear of all claims, liens and encumbrances of every kind and character as provided in said Section 119.1 of the Charter of City. Taxes due for the fiscal year 1944-45 assessed against all or any part of the real or personal property of Company to be conveyed and transferred to City by Company shall be prorated as of September 29, 1944. All other taxes which are or may be assessed against Company shall be paid by Company.

7. Company shall have access at all reasonable times to the operating and financial records of City applicable to the operation of City's unified street railway system, and shall be furnished with quarter-yearly statements in respect thereto.

8. Payments made to Company shall be accompanied by a written statement of City setting forth the items of revenue, expenses and other deductions entering into the determination by City of the amount of such payment. Such statement shall set forth the result of the operation of the unified street railway system in sufficient detail to enable Company to determine therefrom the amount of net revenue payable to Company for the fiscal year covered by such statement. The rights provided for in this paragraph are in addition to those provided for in Paragraph 7 hereof.

9. City covenants and agrees for the direct benefit of Company and any assignee of Company, until the purchase price of said operative properties shall have been paid in full, including interest on the unpaid balance thereof as follows, to wit:

(a) That upon the acquisition of said operative properties City, by and through its Public Utilities Commission shall manage, control and operate said operative properties as an extension of the existing San Francisco Municipal Railway so as to constitute a unified street railway system and that City will at all times operate said operative properties and maintain the same in good running order and otherwise utilize said operative properties in an efficient and economic manner in accordance with the established operating and business standards and practices of the street railway industry, subject only to breakdown and other causes beyond the control of City;

(b) uniform rates, fares and charges and universal transfer privileges shall be established and maintained by the Public Utilities Commission for said operative

properties and the existing San Francisco Municipal Railway and that except for school children and other special cases, pursuant to which reduced or free transportation now exists in accordance with the existing practice of the Municipal Railway, the regular fare for transportation of passengers on said operative properties and the San Francisco Municipal Railway operated as a unified street railway system in the City and County of San Francisco, shall not be less than 7¢ per passenger until the purchase price of said operative properties shall have been paid in full as provided in Section 119.1 of the Charter; and provided, however, that said fares shall not be increased in excess of 7¢ per passenger except in accordance with the procedure of Section 130 of the Charter;

(c) that City will not make any extensions, radical changes or alterations to said operative properties or abandon any substantial portion thereof except only to the extent that such extensions or abandonments are required by reason of the unification of the operations of said operative properties with those of the Municipal Railway. No change, alteration, extension or abandonment of any of said operative properties shall change, alter or modify the percentages fixed in paragraph 3 of Section 119.1 of the Charter for the purpose of accounting for the revenues derived from the operation of said unified street railway system and all such revenues shall be accounted for as in said paragraph 3 of said Section 119.1 of the Charter provided, irrespective of the manner or method of the operation of said operative properties or any change, alteration or abandonment thereof or substitution of any or additional equipment therefor;

(d) that City and all commissions, boards, officers and employees thereof, shall comply with all the terms

and conditions of this contract and said Section 119.1. All of the covenants of City shall inure to the benefit of and be enforceable by any assignee of Company or any person, firm or corporation to whom the whole or any part of the payments to be received by Company have been or may be assigned and consent to such assignment of the whole or any part of such payments is hereby given. All payments required hereunder to be made to Company shall, in the case of any assignment by Company, be paid direct to the assignee designated in any written assignment executed by Company and filed with the Controller of City. From and after the filing of such written assignment, the assignee shall be entitled to all payments so assigned by Company until the amount stated in such assignment shall have been paid in full. Any such assignment shall, by its terms, be irrevocable upon the filing of the same or duplicate thereof with the Controller of City and no subsequent act of City or Company shall impair the efficacy of such assignment and no act of City or Company shall constitute a defense, legal or equitable, to the payment by City of the amount so assigned to such assignee.

10. Company agrees, when requested to do so by Public Utilities Commission, to assign, transfer and set over to City any and all contracts and agreements that Company may have in effect for the operation and maintenance of Company's operative properties, including but not limiting such assignments and transfers to such contracts and agreements as that certain agreement dated the 28th day of March, 1940, with The General Tire & Rubber Company of Akron, Ohio; Criffin Wheel Company dated 1920 wherein the original purchaser was United Railroads of San Fran-

cisco; the advertising contract with Fielder, Sorensen & Davis; contract for purchase of steel cable from Columbia Steel Company; contract for purchase of Diesel engine oil; and all other contracts or agreements that may be requested to be assigned by Company to City.

IN WITNESS WHEREOF, City and County of San Francisco has executed this agreement and contract, in duplicate, by its duly authorized representatives, and Market Street Railway Company has executed same by its duly authorized officers, and affixed their respective seals thereto.

CITY AND COUNTY OF SAN
FRANCISCO,

By Public Utilities Commission
of the City and County
of San Francisco,

Marshall Dill,
President,

Sam McKee,
Vice-President,

W. I. Kohnke,
Commissioner,

Lloyd J. Cosgrove,
Commissioner,

Daniel F. Del Carlo,
Commissioner,

By R. D. Lapham,
Mayor of the City and
County of San Francisco.

Attest:

(Seal) David A. Barry,
Clerk of the Board of
Supervisors.

MARKET STREET RAILWAY
COMPANY,

By Samuel Kahn,
President.

Attest:

(Seal) James J. Adams,
Secretary.

Approved as to form
9/14/44

Cyril Appel,
General Counsel.

Approved as to form

Jno. J. O'Toole,
City Attorney.

Funds available

.....
Controller.

Approved

E. G. Cahill,
Manager of Utilities.

MARKET STREET RAILWAY COMPANY

SALE OF OPERATIVE PROPERTIES TO CITY AND COUNTY OF SAN FRANCISCO. On motion of Stockholder Appel, duly seconded by Stockholder Fay, the following resolution was adopted:

WHEREAS, on the 27th day of July, 1944, the Board of Directors of the Market Street Railway Company unanimously adopted a resolution authorizing the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco pursuant to and in the manner set forth in Section 119.1 of the Charter of the City and County of San Francisco for the sum of \$7,500,000., payable as provided in said Section 119.1 of said Charter, which resolution is as follows:

"SALE OF OPERATIVE PROPERTIES TO CITY AND COUNTY OF SAN FRANCISCO. On motion of Director McCarthy, duly seconded by Director Ehrman, the following resolution was unanimously adopted:

"WHEREAS, pursuant to the provisions of Section 119.1 of the Charter of the City and County of San Francisco, the City and County of San Francisco is authorized to extend the existing San Francisco Municipal Railway by the acquisition of the operative properties of the Market Street Railway Company and to purchase and acquire said operative properties as therein provided; and

"WHEREAS, the Board of Directors considers that it is for and in the best interests of the Market Street Railway Company and its stockholders that its operative properties be sold to the City and County of San Francisco for the

sum of \$7,500,000., payable as provided in said Section 119.1 of the Charter of the City and County of San Francisco;

“NOW, THEREFORE, IT IS RESOLVED: That subject to approval and consent by a vote of the stockholders of the Market Street Railway Company entitled to exercise a majority of the voting power of the Company, the Board of Directors does hereby authorize the sale of the operative properties of the Market Street Railway Company to the City and County of San Francisco pursuant to and in the manner set forth in Section 119.1 of the Charter of the City and County of San Francisco for the sum of \$7,500,000., payable as provided in said Section 119.1 of the Charter of the City and County of San Francisco;

“IT IS FURTHER RESOLVED: That, whenever the stockholders of the Market Street Railway Company approve and consent to said sale of said operative properties, pursuant to and in the manner set forth in said Section 119.1 of the Charter of the City and County of San Francisco for the sum of \$7,500,000., payable as therein provided, the President and Secretary of the Company are authorized, empowered and directed to execute, in the name and on behalf of the Market Street Railway Company and under its corporate seal, and deliver any and all agreements, contracts, deeds, bills of sale, assignments, transfers, instruments of conveyance, writings and documents necessary to consummate the sale of said operative properties of the Market Street Railway Company to the City and County of San Francisco pursuant to the provisions of said Section 119.1 of the Charter of the City and County of San Francisco.”

NOW, THEREFORE, IT IS RESOLVED: That the stockholders of the Market Street Railway Company hereby approve and consent to the sale of the operative properties of Market Street Railway Company to the City and County of San Francisco for the sum of \$7,500,000., to be paid as provided in Section 119.1 of the Charter of the City and County of San Francisco.

The vote approving and consenting to said sale of the operative properties of the Market Street Railway Company was as follows:

	Prior Preference	Preferred	Second Preferred	Common	Total
Appel, Cyril				1	1
Adams, James J.				2	2
Boggs, M. H. B.	15	1	3	6	25
Ehrman, Albert L.				1	1
Fay, Philip J.				1	1
Kahn, Samuel				3	3
Newton, L. V.				1	1
Stock represented by proxies in writing given to Harry S. Scott, Philip J. Fay, and Albert L. Ehrman	79,227	43,666	31,809	77,797	232,499
Total Stock Represented	79,242	43,667	31,812	77,812	232,533

The vote against the sale of the operative properties of the Market Street Railway Company was as follows:

	Prior Preference	Preferred	Second Preferred	Common	Total
Singer, W. D.		50	220	1,110	1,380
Stock represented by proxies in writing given to Harry S. Scott, Philip J. Fay, and Albert L. Ehrman	886	1,438	318	845	3,487
Total Stock Represented	886	1,488	538	1,955	4,867

All of the foregoing proxies were filed with the Secretary and examined and approved by the Committee on Proxies prior to the meeting.

I, JAMES J. ADAMS, Secretary of the Market Street Railway Company, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by the stockholders of said Corporation at a special meeting thereof held on August 3, 1944; that there was then and there present and voted thereon a quorum of said stockholders; and that said resolution is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation this 22nd day of August, 1944.

JAMES J. ADAMS,
Secretary.

EXHIBIT D

**AMENDMENT OF CHARTER OF CITY AND COUNTY
OF SAN FRANCISCO.****EXTENSION OF MUNICIPAL RAILWAY BY UNIFICATION
WITH MARKET STREET RAILWAY.**

Section 119.1.

1. The City and County of San Francisco shall have power and is hereby authorized, in addition to all other powers howsoever conferred upon said City and County, to extend the existing San Francisco Municipal Railway by the acquisition of the operative properties of the Market Street Railway Company, hereinafter called "said operative properties", and to acquire said operative properties, thereby supplying said City and County and the inhabitants thereof with a unified street railway system and incidentally furnishing transportation in and to San Mateo County.

2. The adoption of this section shall be deemed to and shall constitute a finding by the people of the City and County of San Francisco that the public interest and necessity demand the extension of the existing Municipal Railway by the acquisition of said operative properties, thereby providing a unified Municipal Railway System for the benefit of said City and County and its inhabitants.

3. Upon the payment in full of the cost of said operative properties, as herein provided, said operative properties shall be consolidated with the present Municipal

Railway and shall become a part thereof and both of said systems so consolidated, and all additions, betterments and improvements thereto, shall constitute the Municipal Railway of the City and County of San Francisco, and shall be subject to all the provisions of this Charter then in effect. Prior to the payment in full, as herein provided, of the cost of said operative properties the same shall be operated by the Public Utilities Commission, hereinafter called "Commission", and the provisions of Sections 74, 127, 128, 128.1, 129 and 130 of this Charter shall not be applicable to said operative properties, the operation thereof, or the revenues derived therefrom, nor shall any other provision of this Charter, inconsistent with the provisions of this Section 119.1, be applicable; provided, however, that said Commission shall nevertheless manage, control and operate said properties as an extension of the Municipal Railway with uniform fares and transfer privileges so as to constitute a unified street railway system.

Prior to the acquisition of said operative properties, the Commission shall submit, and the Mayor shall approve and the Board of Supervisors shall adopt, a budget relating to such unified operation in the same manner and subject to the same conditions except time as provided in the Charter and in this Section 119.1, for the submission and approval of the annual budget, the annual appropriation ordinance and the annual salary ordinance. Provided that such budget and ordinances shall become effective upon such acquisition.

For the purpose of accounting for the revenues derived from the operation of said operative properties prior

to the payment in full of the cost thereof, 57 per cent of the gross revenues of the Municipal Railway and said operative properties shall be deemed to be and shall constitute the revenues applicable to and derived from the operation of said operative properties, and said revenues shall be set aside by the Controller in a special fund, which is hereby created, to be designated "Municipal Railway-Market Street Extension Fund", hereinafter called "extension fund" and shall be held separate and apart from all other moneys in the treasury.

Out of the moneys estimated to be received in said extension fund there shall be appropriated by the Board of Supervisors the amounts recommended by the Commission for the following purposes and in the following order:

(a) The operating expenses of said operative properties, including pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require in connection with said operative properties. The aggregate amount provided from said extension fund for such requirements in any year shall be 55.96 per cent of the annual cost of all of the operating expenses and above described charges and payments made on account of both the existing Municipal Railway and said operative properties then operated as a unified system;

(b) All amounts provided for repairs and maintenance of said operative properties. The aggregate amount provided from said extension fund for such requirements in

any year shall be 56.49 per cent of the annual cost of repairs and maintenance of both the existing Municipal Railway and said operative properties, then operated as a unified system;

(c) Amounts determined by the Commission to be necessary to create and maintain a reconstruction and replacement fund applicable to said operative properties, not exceeding for the first year after such acquisition \$500,000, and not less than \$300,000, and in subsequent years, until the purchase price shall have been paid in full, a sum not exceeding \$750,000 for the first year and not less than \$500,000 per annum thereafter. Any unencumbered balance remaining in said reconstruction and replacement fund at the close of each fiscal year shall become a part of the moneys to be paid to the Market Street Railway Company pursuant to sub-paragraph (d) hereof;

(d) The entire balance remaining in the extension fund which shall be paid to Market Street Railway Company as required by the terms of the purchase contract, but in any event not later than thirty days after the close of the fiscal year of the City and County. It is hereby found and determined that the ratios herein established for gross revenues, operating expenses and other charges and repairs and maintenance of the Municipal Railway and said operative properties represent the exact ratios prevailing between said systems based on a study and report of the Commission which is hereby approved and adopted.

4. All amounts herein required to be paid from the extension fund shall be paid by the Treasurer of the

City and County upon presentation of a Controller's Warrant drawn at the demand of the Commission. It is hereby made the duty of the Commission to make such demand in accordance with the terms of the purchase contract and for the purposes herein provided.

All moneys paid to Market Street Railway Company shall be applied first to the payment of interest on the purchase price and the balance to the unpaid principal of said purchase price. None of the moneys in said special trust fund shall be diverted to any other purpose or used or applied for any other City and County purposes or transferred to any other fund.

5. The provisions of this Section 119.1 shall prevail over any other provision of this Charter or general law, and the method herein provided for the extension of the existing Municipal Railway by acquisition of said operative properties shall be deemed to constitute an additional method of providing for such extension by the acquisition of said operative properties and for the payment of the cost thereof.

Whenever the Commission with the advice and approval of the Mayor, shall agree with the Market Street Railway Company upon the terms and conditions of such acquisition of said operative properties, it shall be the duty of the Commission and the Mayor to execute such contract for and on behalf of the City and County of San Francisco and in its name. Subject only to the provisions of this Section 119.1, such contract may provide, among other things:

(a) That the maximum purchase price shall be \$7,500,000, whereof \$2,000,000 shall be paid forthwith from

surplus in any of the funds of the existing Municipal Railway derived from earnings of the existing Municipal Railway, which surplus is hereby determined to exist and to be available for, and is hereby appropriated for, said purpose, and the City and County shall be obligated solely to pay the balance of said purchase price exclusively from the moneys in said extension fund, as herein provided. The unpaid balance of said purchase price shall bear interest at the rate of not to exceed four (4) per cent per annum, payable annually.

It is hereby found and determined that after making said initial payment herein provided to be made to Market Street Railway Company there will remain in the funds of the Municipal Railway moneys fully sufficient to pay and discharge all current obligations of the bonds issued by the City and County for the acquisition, construction and completion of said Municipal Railway and all other costs and charges now payable from said funds.

(b) That the title to said operative properties shall be transferred to the City and County upon payment of said \$2,000,000 and the execution of proper instruments of conveyance and shall be good and merchantable title free and clear of all claims, liens and encumbrances of every kind and character, whether in favor of the Market Street Railway Company or in favor of any one other than Market Street Railway Company;

(c) That upon the delivery of such instruments of conveyance, Market Street Railway Company shall assign and transfer to the City and County all franchises, permits and licenses of any kind or character necessary or desirable in connection with the operation of said opera-

tive properties, and shall surrender and cancel its existing operating permit, whereupon all rights, privileges and obligations under said operating permit and all other permits and franchises granted by the City and County shall be terminated and canceled;

(d) That uniform rates, fares and charges, and universal transfer privileges shall be established and maintained by the Commission and that except for school children and other special cases pursuant to which reduced or free transportation now exists in accordance with the existing practice of the Municipal Railway, the regular fare for transportation of passengers on said unified street railway system shall not be less than 7 cents per passenger until the purchase price of said operative properties shall have been paid in full as herein provided; and provided, however, that said fares shall not be increased in excess of 7 cents per passenger except in accordance with the procedure of Section 130 of the Charter;

(e) That the City and County of San Francisco and all commissions, boards, officers and employees thereof shall comply with the terms and conditions of said contract and this Section 119.1. Such contract may contain such other terms and conditions not inconsistent with the provisions of this section, as the Commission may deem appropriate for the purpose of carrying out the objects and purposes of this section, including but without being limited to the agreement that the City and County will operate said operative properties and maintain the same in good running order, and otherwise utilize said operative properties in an efficient and economical manner in ac-

cordance with the established operating and business standards and practices of the street railway industry, subject only to breakdown and other causes beyond the control of the City and County; that the City and County will not make any extensions, radical changes or alterations to said operative properties or abandon any substantial portion thereof except only to the extent that such extensions or abandonments are required by reason of the unification of the operations of said operative properties with those of the Municipal Railway. The City and County, however, shall not be obligated to pay any of the costs or expenses provided to be paid under such contract from any source other than said extension fund.

6. Except for the sum of \$2,000,000 to be paid Market Street Railway Company as herein provided, the obligation of the City and County to pay the balance of said purchase price, interest thereon, all operating expenses, all other charges of any other kind or character incurred in connection with said operative properties shall be limited exclusively to moneys in said extension fund as herein provided and under no circumstances shall the payment of any part thereof constitute a debt, liability or obligation of the City and County of San Francisco, nor shall the City and County be obligated to pay any part thereof from any moneys derived from the levy or collection of taxes upon the taxable property of the City and County of San Francisco, provided that nothing herein or elsewhere in the Charter contained shall prevent the City and County from paying any part of the balance of said purchase price and interest thereon or any other charges in connection with the operation or

maintenance of said operative properties from any funds of the Municipal Railway appropriated by the Board of Supervisors for that purpose, which said funds the Board of Supervisors may in its discretion appropriate; and in the event of such appropriation the provisions of Section 129 of the Charter, insofar as the revenues of the Municipal Railway are concerned, shall be suspended until the cost of the acquisition of said operative properties is paid in full, and provided further that under no circumstances shall the City and County make such payments from its general funds or from any funds other than as provided by this Section 119.1.

7. The acquisition of said operative properties in the manner herein provided is hereby determined to be and shall constitute an extension and improvement of the existing Municipal Railway.

8. Until the purchase price of said operative properties shall have been paid in full, the Commission is hereby authorized to fix, establish and collect uniform rates, charges and fares for the transportation of persons on both the Municipal Railway and the said operative properties, without regard to Section 130 of the Charter, except as herein provided, and provided that such rates, charges and fares shall not be less than those specified in this Section 119.1. After the purchase price of said operative properties shall have been paid in full all rates, charges and fares for transportation service furnished by the then unified and extended Municipal Railway shall be fixed, established and collected only in accordance with the then existing provisions of the Charter, without regard to this Section 119.1.

EXHIBIT E

"Assembly Concurrent Resolution No. 3

CHAPTER 13

Assembly Concurrent Resolution No. 3—Approving amendments to the Charter of the City and County of San Francisco voted for and ratified by the electors of said city and county at a special election held therein on the sixteenth day of May, 1944.

[Filed with Secretary of State June 9, 1944.]

.

WHEREAS, The said legislative authority of said city and county ordered placed upon the ballot at a special election to be held in the City and County of San Francisco on the sixteenth day of May, 1944, the said six (6) several proposals to amend the charter of the City and County of San Francisco, and

WHEREAS, Said special election was held in said City and County of San Francisco on the sixteenth day of May, 1944, * * * and

WHEREAS, At said special election so held on the sixteenth day of May, 1944, six (6) of said proposed amendments to the Charter of the City and County of San Francisco were ratified by a majority of the electors of said city and county voting thereon, six (6) being the total number of proposed charter amendments submitted to the electors of said city and county at the special election heretofore referred to, and

WHEREAS, The six (6) charter amendments so ratified by the electors of the City and County of San Francisco

at the special election held on the sixteenth day of May, 1944, are now submitted to the Legislature of the State of California for approval or rejection each as a whole without power of alteration or amendment in accordance with the provisions of Section 8 of Article XI of the Constitution of the State of California, and are in words and figures as follows:

CHARTER AMENDMENT No. 1

[Here follows a copy of the Charter Amendment copied in Exhibit D, supra.]

Now therefore be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF CALIFORNIA, THE SENATE THEREOF CONCURRING, a majority of all the members elected to each house voting therefor and concurring therein, That said amendments to the Charter of the City and County of San Francisco, as proposed to, and adopted and ratified by the electors of said city and county, and as hereinbefore fully set forth, be and the same are hereby approved as a whole without amendment or alteration, for and as amendments to, and as part of the Charter of the City and County of San Francisco."

CALIFORNIA PUBLIC UTILITIES ACT, SECTIONS 35, 36, 37, 42.

(Cal. Stats., 1915 p. 115, as amended; Deering's California General Laws, Act 3.)

§35. **UNJUST RULES, ETC., TO BE CHANGED.** Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods, to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

§36. **ORDERING OF IMPROVEMENTS.** Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such

additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

§37. ORDER TO RUN ADDITIONAL CARS, ETC. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for trans-

portation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

* * * * * * *

§42. SAFETY DEVICES. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling, to establish uniform or other standards of construction and equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand.

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**CHARLES ELMORE DROPLEY
CLERK**

**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1944.

Nos. 510-511.

MARKET STREET RAILWAY COMPANY, *Appellant,*

v.

**RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
FRANCK R. HAVENNER, C. C. BAKER, et al., etc.
*Appellees.***

REPLY BRIEF FOR APPELLANT.

**CYRIL APPEL,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
HENRY G. HAYES,
*Counsel for Appellant.***

**PILLSBURY, MADISON & SUTRO,
*Of Counsel.***

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. 510-511.

MARKET STREET RAILWAY COMPANY, *Appellant*,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND
FRANCK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER,
THE MEMBERS OF AND CONSTITUTING THE RAILROAD COM-
MISSION OF THE STATE OF CALIFORNIA, *Appellees*.

REPLY BRIEF FOR APPELLANT.

**EVENTS OCCURRING SINCE RENDITION OF THE
ORDER OF THE RAILROAD COMMISSION AND OF
THE DECISION OF THE SUPREME COURT OF
CALIFORNIA.**

(Brief for Appellees, pp. 2-3)

Appellees agree that the facts occurring since the rendition of the judgment of the court below should be taken into consideration, and that "this Court, in disposing of this

case, would be free to make whatever decision that justice and equity might require."¹ This is the sum of our own suggestion. We point-out, however, that *Interstate Commerce Commission v. City of Jersey City*, 322 U. S. 503, cited and quoted by appellees,² is not in point. There, this Court refused to set aside the action of the Interstate Commerce Commission in refusing, in the exercise of its discretion, to grant a rehearing. The Court pointed out (322 U. S., p. 514 et seq.) that the rehearing was sought merely "to bring the record up to date"; that to require administrative tribunals to grant rehearings for such purpose would stall indefinitely the enforcement of administrative orders, since there must be a gap between the time the administrative record is closed and the decision is promulgated. And the Court held that petitions for reopening of the record, because of new circumstances, are pleas to the discretion of the Commission and its action on such pleas should be disturbed only in exceptional cases.

The instant case is quite different. Here is no question of a "stale" record. The changes which have occurred have radically altered the entire situation and, quite aside from the stay, have prevented the functioning of the order in accordance with the intent of the Commission at the time the order was promulgated. These changes occurred after the decision of the court below and pending the appeals in this Court. The Commission has not had a chance to consider them. Nothing can be "stalled," for the lines are now owned by the City and are operating—outside the jurisdiction of the Commission—on a 7-cent fare. Appellant's position goes no further than to fulfill its obligation to advise this Court of the present status of the case and to recognize the power of this Court to make such disposition of the case as it deems appropriate in the interests of justice.

¹ Brief for Appellees, p. 2.

² Brief for Appellees, p. 3.

STATEMENT OF THE CASE.

(Brief for Appellees, pp. 4-16)

The discussion under the heading, "Statement of the Case," in appellees' brief is argumentative. We shall, therefore, reply to it under the appropriate headings in the argument, hereinafter set forth.

PRESUMPTION OF LEGAL CORRECTNESS AND VALIDITY OF DECISIONS AND ORDERS OF THE RAILROAD COMMISSION.

(Brief for Appellees, pp. 16-19)

Under the above heading, appellees contend that the decisions of public service commissions are presumptively correct and valid, and "that there is no burden cast upon them to produce one figure or one fact in defense of the rate reduction order involved in this proceeding until such time as appellant has made a prima facie showing to this Court that said rate order is invalid"; "that in a proceeding of this nature the only question for determination by the Court is one of confiscation."² Like comments appear elsewhere in the brief.³ These remarks have no application to the points appellant urges involving procedural due process of law. As this Court pointed out in *R. R. Comm'n v. Pacific Gas Co.*, 302 U. S. 388, 395,⁴ and in the other authorities cited in our opening brief,⁵ the requirements of procedural due process must be met before the question of confiscation arises; only thus can a record come into existence on which a determination of the question of confiscation can be made.⁶

² Brief for Appellees, pp. 17, 19.

³ Brief for Appellees, pp. 18, 37, 44.

⁴ Quoted at page 54 of our opening brief.

⁵ Brief for Appellant, pp. 53-55/

⁶ Brief for Appellant, p. 56.

ARGUMENT.

I.

Reply to Appellees' Contention that Appellant Was Accorded Procedural Due Process at Every Stage of the "Rate" Proceeding in Question.

(Brief for Appellees, pp. 20-22).

Under the first subdivision of their argument,⁷ and under the heading "Statement of the Case",⁸ appellees seek to answer appellant's contention that the order is invalid because made without notice of, or an opportunity for, a hearing on the issue of rates. They refer to three parts of the record as the portions which gave appellant notice that its rates were in issue: (1) the order instituting the investigation,⁹ (2) the preliminary statement by Commission Witness Hunter,¹⁰ and (3) the testimony of Commission Witness Mors, including Exhibit 10.¹¹

Appellees also assert generally (Brief, p. 15) that they "might point out at great length the many and voluminous exhibits received in evidence" that would show appellant had "ample and notorious notice" (Brief, p. 15). Appellees do not point out any such exhibits or evidence. None exists. Such argument is of the same character as the generalizations in the opinion of the court below that "thirty-three exhibits were introduced," "voluminous annual and monthly reports * * * were by stipulation deemed to be before the Commission," and "oral evidence is contained in three volumes of transcribed testimony" (R. 599-600).

Turning to the specific matters referred to by appellees, the order instituting the investigation (R. 56) provided

⁷ Brief for Appellees, pp. 20-22.

⁸ Brief for Appellees, pp. 10-16.

⁹ Brief for Appellees, pp. 10, 20.

¹⁰ Brief for Appellees, pp. 10-14.

¹¹ Brief for Appellees, pp. 14-15.

"that an investigation be and hereby is instituted upon the Commission's own motion into the reasonableness of the rates, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company;"

In other words, the investigation described was as broad as the powers of the Commission. It could have included any or every possible phase of appellant's business and activities. Appellant does not contend that this notice was ineffective to bring it before the Commission. In the absence of any complaint however—and none was filed—it gave no specific notice what course the proceedings would take. In this regard it is substantially identical with the notice considered in the *Morgan* case. As to those proceedings this Court said (*Morgan v. United States*, 304 U. S. 1, 19):

"No specific complaint was formulated and, in a proceeding thus begun by the Secretary on his own initiative, none was required. Thus, in the absence of any definite complaint, and in a sweeping investigation, thousands of pages of testimony were taken by the examiner and numerous complicated exhibits were introduced bearing upon all phases of the broad subject of the conduct of the market agencies."

But the instant case goes far beyond the situation which developed in the *Morgan* case. Here, there was not even a sweeping investigation of all phases of appellant's activities, including rates. Instead, the broad sweep of the investigation described in the order was specifically narrowed by the Commission itself. Appellant and all others participating were told by the Commission that the hearing was to relate to appellant's service, and appellant was specifically instructed by the Commission to direct its evidence to that issue. Pursuant to this specific definition, the hearing was devoted solely to appellant's service; the evidence and argument—not only of appellant but of the

Commission's own witnesses and counsel—was addressed solely to that issue.¹²

The next matter referred to by appellees, as constituting sufficient notice, is Mr. Hunter's preliminary statement, quoted at pages 10-13 of their brief. We wish to make a rather detailed analysis of this contention, for it is significant.

Appellees italicize Mr. Hunter's statement that appellant's monthly reports show the "*original cost of physical properties based upon the valuation as of April 1st, 1921, . . . brought up to date by adding additions and betterments and eliminating retirements*" (p. 11). Next, they italicize a reference by Mr. Hunter to a "*Report on present market value of the Market Street Railway Company*" (p. 11). Next they italicize his reference to a report dated November 16, 1942, the primary purpose of which "*was to give the Commission the benefit of certain studies dealing with the estimated operating results that would obtain in employing a uniform fare structure; . . . The estimates were based upon a 6-cent fare for both properties; . . .*" (p. 12). Finally, they italicize Mr. Hunter's statement that "*further studies and reports will be prepared and presented [by the Commission's Engineering Department] dealing in more detail with the elements that should be considered in connection with the investigation now before the Commission. . . . we will investigate . . . studies on rate base figures, the estimated operating results that would obtain under different fare structures*" (p. 13).

Immediately following the above quotation, the Brief for Appellees contains this statement (pp. 13-14):

"Pursuant to the statement by the witness Hunter
 . . . this proposed material was received in evidence
 . . ."

This Court will weigh this representation in the light of the record.

¹² See the review of the record in our opening brief. Brief for Appellant, pp. 19-38.

The record (R. 368) shows that in the quoted statement Mr. Hunter was not detailing evidence in this proceeding. He was referring to information in the Commission's files when it instituted the present investigation. Whether at the time Mr. Hunter thought all or some of these documents would be pertinent to, and introduced in evidence in, the present proceeding is not known. Before the end of the morning session at which he enumerated these documents, the members of the Commission had made the statements we quote at pages 22-26 of our opening brief, confining the issue to questions relating to appellant's service. Thereafter, the "report on present market value of the Market Street Railway Company," reference to which is italicized on page 11 of appellees' brief, *was never introduced in evidence in this case*. The fare study "based upon a 6-cent fare," reference to which is italicized on page 12 of appellees' brief, *was never introduced in evidence in this case*. The "studies on rate base figures" and "the estimated operating results that would obtain under different fare structures," which Mr. Hunter said the Commission's staff expected to investigate, and reference to which is italicized on page 13 of appellees' brief, *were never introduced in evidence in this case*.¹³ In summing up the Commission's entire case, Mr. Hunter pointed out that the evidence prepared and submitted in this hearing by the Commission's staff had been directed to appellant's service (R. 456-457); that this investigation "does not analyze the rate situation" (R. 467).¹⁴

The final portion of the record referred to by appellees is the testimony of Mr. Mors, "particularly Exhibit 10."¹⁵

¹³ Appellant's monthly operating reports from 1938 to May, 1943, were made a part of the record by stipulation (R. 378), but these reports contain many matters relating to service. At no time during the hearing were they referred to as having any bearing upon the present fair value of appellant's properties.

¹⁴ See Brief for Appellant, pp. 32-33. We shall answer in a moment appellees' assertion that this statement of Mr. Hunter does not refer to the Commission's entire investigation but only to "the contents of Exhibit 17, which he had before him at the time he was testifying" (Brief for Appellees, p. 15).

¹⁵ Brief for Appellees, p. 14.

Of this exhibit, appellees generalize:

"Space would not permit the analyzation of all the elements of Exhibit 10 but it does cover, together with the other exhibits introduced in evidence, the entire range of subjects that are conventionally and usually covered in rate proceedings. * * * If appellant did not understand that such evidence is of the very essence of a rate proceeding, then, it must be admitted that appellant has only its own ignorance to blame for misunderstanding the aim and the purport of the proceeding in question."¹⁶

Appellees are mistaken. Mr. Mors' exhibit is an historical operating report. It does not "cover * * * the entire range of subjects * * * in rate proceedings." To mention only basic essentials, it contains

1. No rate base study;
2. No evidence of what is a fair rate of return on appellant's property;
3. No evidence as to the amount of traffic which could be expected to move under a 6-cent fare;
4. No evidence of the amount of revenues which would be realized from such traffic;
5. No evidence of the expense which would be incurred in handling such traffic.

The sum of Mr. Mors' exhibit, and the issue on which it was presented and to which it related, is best stated by Mr. Hunter, the Commission's own chief witness (R. 456):

"Mr. Cassidy: Mr. Hunter, are you familiar with the exhibits presented by Mr. Mors and Mr. Hall, and the studies made by them?

A. I am.

Q. Those studies were made under your general supervision?

A. That is correct.

Q. Have you arrived at certain conclusions and recommendations as a result of the various studies?

A. Yes, I have.

¹⁶ Brief for Appellees, pp. 14, 15.

Q. And have you prepared a report?

A. I have."

Mr. Hunter then distributed his Exhibit 17, which summarized the Commission's whole case and which was entitled (R. 279):

"Conclusions and Recommendations Looking Toward a Betterment in the Service Provided by the Market Street Railway Under War Time Conditions, in Connection with the Investigation by the Commission on its Own Motion In Case 4680. To Be Presented at the Hearing in San Francisco, July 15, 1943."

Thereafter, in referring to all of the Commission's exhibits, and, in particular, to Mr. Mors' exhibit, Mr. Hunter said (R. 456-457):

"I think our exhibits introduced in this record supports the conclusion that the service on the Market Street Railway should be improved. In our study we have attempted to, first, test the service on the ground through other information and then, from that information, attempt to draw conclusions."

All of Mr. Hunter's testimony is to the same effect. It is a demonstration that no one participating in this proceeding knew that the Commission was conducting a hearing on the reasonableness of appellant's rates; that it contemplated a rate reduction order.

Appellees italicize, on page 14 of their brief, references to the treatment in Mr. Mors' exhibit of operating expenses, depreciation practices, revenue, traffic, road and equipment; and they describe these as "the basic elements involved in any rate proceeding."¹⁷ We have noted that these matters—together with the many other matters *not* in this record—would be pertinent in a rate proceeding. They are also pertinent, however, to service problems and, in this proceeding, were introduced and considered solely

¹⁷ Brief for Appellees, p. 15.

in connection with such problems. Particularly were they pertinent to Mr. Hunter's principal service recommendation, that appellant be required to set aside a portion of its temporary war earnings in a special fund, to be used to pick up deferred maintenance after the war.¹⁸ Mr. Hunter's testimony concerning this recommendation shows that a rate reduction order was the furthest thing from his mind (R. 469):

"I think the thing to do now is to program for the future. I think it is only fair to the Company, who I think is entitled to some prosperity, it has experienced hard times in the last few years, but even with that I think now is the time to lay aside a fund so that when facilities are available they will be in the position to take advantage of them, they will be in a position to pick up the deferred maintenance. If they are to continue in service in this City I see no reason why it should not be a profitable business, even with the competition of the City.

• • • I feel that the Market Street Railway can look ahead to future operations with prosperity if it surrounds itself with modern equipment, and to insure that I think the thing to do is to create a fund, a plan whereby these earnings are impounded. Withdrawals from the fund to be subject to the Commission's approval."

There remains one point to answer. At pages 15-16 of appellees' brief, appellant is accused of misrepresenting the record in quoting Mr. Hunter to the effect that the investigation did not analyze the rate situation. They say that when Mr. Hunter made this statement he was "*addressing himself to the contents of Exhibit 17, which he had before him at the time he was testifying.*"¹⁹

This is a surprising statement. The point is important. It can be answered only by a rather detailed reference to

¹⁸ Recommendation 7, Exhibit 17, R. 286.

¹⁹ Brief for Appellees, p. 15.

Mr. Hunter's testimony at pages 456-465 of the record. We already have quoted a portion of this testimony (*supra*, pp. 8-9). Mr. Hunter's testimony was that he is familiar with the "studies" (exhibits) prepared and presented by Mr. Mors and Mr. Hall; that these "studies" were made under his supervision; that he has arrived at certain conclusions and recommendations as a result of these "studies" and that he has prepared Exhibit 17 embodying these conclusions and recommendations. He then discusses these recommendations in the light of all the evidence presented by the Commission. He refers variously to the Commission's evidence as "exhibits," "studies," "study," "checks." Thus, he says "In our study we have attempted to, first, test the service on the ground through other information and then, from that information, attempt to draw conclusions" (R. 456-457); "Mr. Hall's exhibit shows the lack of manpower with respect to getting the schedules out" (R. 460); "Certainly it is the duty of this carrier to do everything in its power to provide the best service possible, and in looking over these charts that have been introduced by Mr. Hall, I think it can be fairly said that there is and should be an improvement in that situation because many of the cars operate ahead of schedule" (R. 464); "Our checks show that the tracks on Market Street are out of balance; the outer tracks are carrying more traffic than the inside tracks" (R. 466); "Our study shows that the Municipal Line is suffering for lack of manpower also" (R. 466). When he refers to "our study" or "studies" he means the facts developed in the Commission's case in support of the conclusions and recommendations in Exhibit 17. It was in this discussion that Mr. Hunter pointed out that this "study and investigation does not analyze the rate situation" (R. 467). When he speaks of this "investigation" he can mean only the instant proceedings which were entitled, "In the Matter of the Investigation . . . of the Market Street Railway Company" (R. 56), and which were in-

stituted by the Commission's order "that an investigation be and hereby is instituted" etc. (R. 56):

We close this discussion by pointing out, first, that the authorities relied upon by appellees are not in point,²⁰ and, second, that counsel for appellees have not pointed to a single statement in the entire proceedings by any Commissioner, by any witness, by any attorney, which directly or indirectly says that the reason-

²⁰ In *American Toll Bridge Co. v. Railroad Comm'n. of California*, 307 U. S. 486 (Brief for Appellees, p. 20), the contention that notice and opportunity for hearing were not accorded was not only an afterthought (307 U. S. pp. 492-493), but, as the Supreme Court of California pointed out, the "issues were . . . clearly defined and understood by all parties concerned during the course of the hearing." *American Toll Bridge Co. v. Railroad Commission*, 12 Cal. (2d) 184, 207. And see the opinion of this Court, 307 U. S. 486, 492-493).

In *National Labor Relations Board v. Mackay Radio & Tel. Co.*, 304 U. S. 333, this Court said (p. 350): "A review of the record shows that at no time during the hearing was there any misunderstanding as to what was the basis of the Board's complaint. The entire evidence pro and con was directed to the question whether . . . the respondent did in fact discriminate . . . While the respondent was entitled to know the basis of the complaint against it, and to explain its conduct, . . . we find from the record that it understood the issue and was afforded full opportunity to justify the action of its officers . . ."

Railroad Commission of California v. Pacific Gas & Electric Co., 302 U. S. 388, reviewed an order of respondent reported in 39 C. R. C. 49. As the opinion of this Court notes, the proceeding was brought under section 32 of the California Public Utilities Act, which deals specifically with investigations into the reasonableness of rates. The evidence taken before the Commission was not brought before this Court. However, the Court did point out that the reports of the California Railroad Commission showed that extended hearings were had, and the decision of the California Railroad Commission, reported in 39 C. R. C. 52, shows that the evidence in that proceeding dealt directly with the issue of the reasonableness of the utilities' rates.

In *N. W. Bell Tel. Co. v. Ry. Comm'n.*, 297 U. S. 471, this Court said (p. 476): "Possibility of doubt as to the purpose of the hearing was removed in its course before the Commission. At the outset the presiding commissioner announced that the purpose was to fix the 1934 rate, a statement which he repeated later in the course of the hearing on the same day. . . . the testimony . . . discloses that both the Commission and the appellant were seeking to estab-

ableness of appellant's 7-cent rate or any other rate was in issue, or that the Commission expected to hear evidence on the reasonableness of appellant's rates, or that the Commission contemplated any order affecting appellant's rates. There are no such statements. We submit that the full and fair hearing required by the due process clause is not satisfied in a case where the issue decided is not once mentioned in a complaint or at the hearing; where, on the contrary, the Commission expressly states that the hearing is to be on an entirely different issue and the hearing in fact is devoted to that issue.

Cf. N. W. Bell Tel. Co. v. Ry. Comm'n., 297 U. S. 471, 476, quoted *supra* pp. 12-13, footnote.

Surely, if appellant was fairly to be apprised that the reasonableness of its rates was involved, the presiding Commissioner at the outset of the hearing, in reply to Mr. Hohn's comment, "I do not know exactly what scope this investigation might take," instead of stating that the investigation was undertaken "that it might result in some improvement of the public transportation for the people of San Francisco," could have explained that the Commission had in mind ordering a reduction of the 7-cent San Francisco rate and desired evidence on that question.²¹ Instead of telling Mr. Kahn, appellant's president, that the Com-

lish the proper rate of depreciation to be applied to appellant's property for 1934. The state court rightly concluded that appellant was afforded a full hearing upon adequate notice that the Commission proposed to fix a depreciation rate for 1934, and that the requirements of due process were satisfied."

The situation in the case at bar is in direct contrast; at the outset the presiding Commissioner announced that the purpose of the hearing was to inquire into the adequacy of appellant's service.

Neither *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, nor *Ashbury Truck Co. v. Railroad Commission*, 52 F. (2d) 263, support appellees' position. On the contrary both emphasize the requirement that procedural due process of law requires that the party to be affected by the order must be accorded a hearing at which he is apprised of the issues and is afforded an opportunity to offer evidence and cross-examination concerning those issues.

²¹ Brief for Appellant, pp. 22-23.

mission would be interested in the Company's program for improvement of service and desired a "presentation from the Company of what the Company itself proposes to do [with respect to service] aside from anything that the Commission may want to recommend or order,"²² Commissioner Sachse could have told Mr. Kahn that what the Commission wanted was evidence bearing upon the reasonableness of the 7-cent San Francisco rate. Instead of telling Mr. Kahn that the investigation was started, that it might be productive of some improvement in transportation for the people here during this emergency period in particular,²³ the presiding Commissioner could have warned appellant to be ready at the adjourned hearing to justify its 7-cent San Francisco rate. When summing up the evidence of the Commission's witnesses and pointing out in his Exhibit 17 the conclusions and recommendations which the case made by the Commission supported, Mr. Hunter could have omitted everything in his exhibit and instead written a report attacking the reasonableness of the 7-cent San Francisco rate. When Mr. Appel moved to strike the resolutions relating to the sale of appellant's property on the ground that they were not material to the inquiry before the Commission, instead of overruling the motion on the ground that the Commission "pursues a very liberal policy in allowing testimony to go in the record,"²⁴ the presiding Commissioner could have stated that these resolutions were material because they showed the fair value of appellant's property and were therefore pertinent to the question whether appellant's 7-cent San Francisco rate was reasonable. Instead of merely giving a history of appellant's affairs and particulars relating to its present service, the Commission's witnesses could have devoted their testimony to the

²² Brief for Appellant, p. 24.

²³ Brief for Appellant, p. 26.

²⁴ Brief for Appellant, p. 30.

essential facts necessary to a consideration of the reasonableness of appellant's 7-cent rate and the contemplated 6-cent rate. Engineering estimates as to these essential facts—all lacking in this record—could have been made and subjected to cross-examination, explanation, and rebuttal. If this had been done appellant would have had a fair hearing, the Railroad Commission would have had evidence upon which to base its findings and order, and this Court would have had a record from which it could determine whether the ordered rate is or is not confiscatory.

II.

Reply to Appellees' Contention that the Rate Reduction Order is Fully Supported by the Evidence.

(Brief for Appellees, pp. 22-36)

Appellees recognize that "future estimates of revenue, expenses, and earnings must be adjudged in light of projections made by experts and based upon the utility's experience of the present and the past" (Brief, p. 23). But they point to no such testimony in this record, and there is none. They are able only to generalize: "These figures, as will hereafter be shown, ~~were~~ *legitimate computations permissibly deduced from the facts and figures contained in the record*" (p. 5); "It [the appendix to appellees' brief] illustrates the completeness of the record . . . reveals the background for the Commission's opinion and order . . . (and) brings into bold relief the basis for condemning the 7-cent fare and, in lieu thereof, ordering a 6-cent fare established" (p. 24); "Having demonstrated conclusively that the record is adequate in every respect and that the Commission assiduously adhered to that record in its determination, . . ." (p. 29); "The record support for its deliberation is hereinafter discussed" (p. 29); "We have taken the trouble to detail many of the mechanics and formulae by which the ordered reduction was arrived at, even at the expense of an exhausted patience"

(p. 31); "the Court's attention is respectfully called to the detailed financial data contained in Exhibit 10" (p. 33); "The processes utilized in developing each of the factors charged with being mere 'expectations' have been minutely described" (p. 33); "the Commission confined itself to ordering a 6-cent fare established upon concrete and indisputable evidence" (p. 35); "it went no further than to make permissible and lawful use of expert judgment derived from uncontradicted facts" (p. 36).

All of these are simply unsupported general assertions, without reference to the record. The only specific argument occurs in the quotations from appellees' brief in the court below, and particularly in the chart to which that argument relates.²⁵ And this argument simply demonstrates the lack of evidentiary support for the Commission's order.²⁶

In their quoted argument, appellees suggest that the essential facts relating to future traffic, revenue, and expense can be drawn by the members of the Commission from "their knowledge of human experience in ordinary matters of life."²⁷ It is self-evident that such "knowledge" does not comprehend, without the aid of testimony, the fact that under a 7-cent fare appellant, during the year 1943, would carry 120,000,000 full-fare passengers (an increase of approximately 16,000,000 over the preceding year²⁸), and that during the year 1944, under a different and non-competitive fare structure—never before tried—it would carry 136,700,000 full-fare passengers, an increase of 32,700,000 over 1942 (the last calendar year as to which evidence of traffic is in the record), and an increase of 16,700,000 over the estimated traffic for 1943. The very exactness of this last figure—not even in round numbers

²⁵ Brief for Appellees, pp. 24-31.

²⁶ Brief for Appellant, p. 43, et seq.

²⁷ Brief for Appellees, p. 30.

²⁸ The company carried 104,119,993 full-fare passengers in 1942. See first two figures in the third column of figures, R. 183 (Exhibit 10).

of millions—carries its own doubts.²⁹ Nor does such “knowledge of human experience in ordinary matters of life” comprehend, without the aid of any testimony, the fact that it would cost \$7,940,000 to carry 120,000,000 full-fare passengers in 1943 and \$8,000,000 to carry 136,700,000 passengers in 1944.

As a matter of fact the estimated expense which would be incurred in handling such vast numbers of additional passengers could be arrived at by experts only after a consideration of many difficult factors. For example, with equipment and manpower strained to the utmost, it would be necessary for appellant to acquire additional equipment and manpower. This was especially pointed out by the concurring Commissioners (R. 104). Quite likely, therefore, the cost of hauling the additional passengers would be higher per passenger than the cost of transporting the present passengers within existing capacity. It would be a case of having to buy a second camel for the first straw in the second load.

Sensing the vulnerability of the Commission's allowance of only \$60,000 additional operating expenses to take care of the 16,700,000 additional passengers it assumed the 6-cent fare would attract, appellees undertake to compare the \$8,000,000 of expenses under the 6-cent fare, not with the expenses of \$7,940,000 for 1943, but with the expenses of \$7,347,028 for the year ending April 30, 1943. They point out that the difference is \$652,972, not \$60,000, and contend that this “disposes of any contention raised by

²⁹ Of course, the figure of 136,700,000 was arrived at arithmetically after the Commission had rendered its decision, in an effort to support the revenue figures in the Commission's findings. This is clear from the note on the chart opposite page 25 of appellees' brief. The draftsman points out that “‘B’ represents 136,700,000 full-fare passengers required to produce total operating revenue of \$8,500,000 estimated under 6¢ fare.” Obviously all the draftsman did was to compute back from the unsupported revenue figure in the Commission's decision in order to get the “estimate” of 136,700,000. The latter figure was then put forward to support the revenue figure.

appellant that only \$60,000 was allowed for additional expense for prospective increase in patronage.³⁰

The \$60,000 is not appellant's figure. It is the Commission's. The Commission ordered the 6-cent fare into effect as of the end of 1943 (R. 92). Chronologically, and by the terms of the Commission's own decision, the comparative expense figures clearly are the \$7,940,000 allowed for 120,000,000 passengers in 1943, and the \$8,000,000 allowed for 136,700,000 passengers in 1944.

Beyond this, appellees in their attempt to relate the \$8,000,000 of expense for 1944 to the period ending April 30, 1943, have overlooked another difficulty. Even if expense allowance were related back to the expense for the earlier period, the increase would still be only \$652,972. And this amount must cover the cost of transporting, not only the 16,700,000 additional passengers expected for 1944, but also the 7,000,000 additional passengers required to make up the 120,000,000 passengers expected for 1943.³¹ In other words, the \$652,972 must transport not 16,700,000 passengers but 23,700,000 passengers. The expense figure per passenger still remains an absurd fraction of appellant's actual expense.

Appellees suggest that all of this is no more than the making of "pragmatic adjustments" permitted to the Commission under the decisions of this Court.³² No decision of this Court holds that such "adjustments" can supply the lack of evidence on an essential point.

Driven to extremes, appellees also suggest that appellant has no ground to complain until it has tried out the order and experience has demonstrated that it is confiscatory (Brief, p. 35):

³⁰ Brief for Appellees, p. 31.

³¹ During the twelve months ending April 30, 1943, appellant carried approximately 113,000,000 full-fare passengers. See chart opposite page 25 of brief for appellees.

³² Brief for Appellees, pp. 8, 32.

"Until the 6-cent fare had been tried and the subsequent facts disproved the Commission's judgment, appellant is hardly in a position to criticize . . ."

This is not the law.³³

III.

Reply to Appellees' Contention that the Order is Not Based on Matters Outside the Record.

(Brief for Appellees, pp. 37-39)

Appellees admit that the Commission arrived at its figure of operating revenues for the eight months' period ending August 31, 1943, by consulting reports forming no part of the record.³⁴ In the court below they did not concede that this constituted error.³⁵ They now admit that perhaps a "technical irregularity" resulted.³⁶ They seek to palliate this departure from the record by asserting that the Commission merely referred to the reports for "illustrative" purposes; as an "isolated comparison" of no more significance than any "isolated description, adjective, illustration, or comma" in an opinion.³⁷

The record does not permit this treatment of the Commission's action. The revenue figure does not appear as an "illustration" in an opinion. It appears in the Commission's essential findings.³⁸ These findings show that the figure of operating revenues derived from sources outside the record was the "basis" upon which the Commission ar-

³³ *Prendergast v. N. Y. Tel. Co.*, 262 U. S. 43, 49, and authorities cited at pages 46-48 of our opening brief. Compare *Driscoll v. Edison L. & P. Co.*, 307 U. S. 104, and *Bronx Gas & Electric Co. v. Maltbie*, 271 N. Y. 364, 3 N. E. (2d) 512, both involving interim rates under a statute providing—as the California statute does not—for recoupment of losses if interim rates prove inadequate.

³⁴ Brief for Appellees, p. 38.

³⁵ Brief for Appellees, p. 38.

³⁶ Brief for Appellees, p. 37.

³⁷ Brief for Appellees, p. 37.

³⁸ No findings other than those set forth in its decision were made by the Commission.

gived at its estimates of revenue for the year 1943 and, in turn, for 1944 (R. 87):

“In the eight months’ period, January to August, inclusive, of 1943, the operating revenues of the company amounted to \$5,689,775, compared with \$4,747,856 for the same period in 1942, an increase of twenty per cent. *On this basis* the total for the full year of 1943 under a seven-cent fare may be expected to be about \$8,700,000.”³⁹

In its answer to the petition for writ of review in the court below (R. 20), the Commission itself alleged: “The quotations in the margin also show by what mathematical process the Commission reached its conclusion that a net income of about \$500,000 would be earned by the company in the first twelve months under the six-cent fare” (R. 37-38). The first, and, as the Commission itself said, the “basic,” figure appearing in the margin is the \$5,689,775 operating revenues (R. 37). It is quite apparent that without this figure the Commission might have arrived at a different estimate of revenues for the future. Likewise—and more important—if appellant had been given an opportunity to explain the reports, or to supplement their data, an entirely different (and correct) estimate might have been reached.

Appellees say (Brief, p. 37):

“Even conceding the existence of an irregularity this court has little or no concern therewith. Its concern is whether the action of the Commission in the totality of its consequences avoids confiscation of appellant’s properties.”

In our opening brief we pointed out the vice in this contention.⁴⁰ The inquiry whether procedural due process has been accorded must precede a consideration of confiscation. A trial *de novo* no longer being accorded, the record upon which the question of confiscation can be determined does not come into existence until the administrative tribunal has

³⁹ See also the more complete quotation of the Commission’s findings at pp. 38-40 of our opening brief.

⁴⁰ Brief for Appellant, pp. 52-56.

granted a hearing and spread upon the record the evidence upon which it acts. The requirement that the tribunal must act upon evidence is not only an essential requirement of due process of law; it is the very foundation of the structure of our present administrative law.

IV.

Reply to Appellees' Argument Under the Heading "Value of the Service Was Properly Considered by the Commission."

(Brief for Appellees, pp. 39-43)

Appellees are unable to refer to any evidence that would support a finding that the value of appellant's service is 6 cents per ride.⁴¹ However, they now concede that the Commission's order cannot be sustained on the theory that the service, independently valued, is worth only 6 cents per ride. In view of this concession, and in view of the fact that the court below was unwilling to sustain the order on this ground,⁴² no purpose would be served by further discussion of the point.

V.

Reply to Appellees' Contention that the Order is Neither Invalid Nor Confiscatory.

(Brief for Appellees, pp. 43-44)

On the issue of confiscation, appellees confine their argument to an attempted defence of the Commission's action in accepting the figure of \$7,950,000 as the fair value of appellant's properties for rate making purposes. We have answered this contention.⁴³ Appellees do not discuss our authorities. They simply assert, without support, that

⁴¹ See Brief for Appellees, pp. 39-41.

⁴² See Brief for Appellant, pp. 18-19.

⁴³ Brief for Appellant, pp. 64-65.

"market or commercial value can be a test!" We submit this is contrary to precedent and to sound principles.⁴⁴

Appellees have no answer to our demonstration that, aside from any question of rate base, a 6-cent fare is confiscatory because it will result in an actual operating loss.⁴⁵ For this reason we have emphasized here, as we did below, that the question as to the proper rate base is of subordinate importance. Appellees are mistaken in asserting (Brief, p. 7) that we have changed our position on this point.⁴⁶

Appellees say "that appellant, at no time, ever suggested a rate base figure or fair value that should be allowed for its properties for rate making purposes. It has contented itself with criticizing the rate base set up by the Commission."⁴⁷ The court below made a like statement.⁴⁸ These assertions are incorrect. We have shown that the procedure followed by the Commission gave appellant no opportunity to present evidence at the hearing on the reasonableness of its rates. Immediately after the Commission's order appellant asked for a rehearing. Both in its petition (R. 113), and in argument in support of it,

⁴⁴ "The sale or exchange value of a plant, depends largely upon what it will earn. What it will earn depends upon its rates. If value depends upon rates, and if rates are to depend upon value, the whole scheme of rate making is absurd." (*In Re Michigan State Telephone Co.* (Mich.), P. U. R. 1921C, 545, 555; *In Re Detroit United Railway* (Mich.), P. U. R. 1923E, 282, 289). And see the authorities cited in our opening brief, p. 64.

⁴⁵ Brief for Appellants, pp. 66-67.

⁴⁶ Appellant's petition for a rehearing is in the record (R. 105-113). One paragraph deals with the rate base (R. 110). The points most strongly emphasized are those emphasized here. In the Supreme Court of California only two pages of our brief were devoted to our position on the \$7,950,000 rate base. The points we most strongly emphasized are those emphasized here.

⁴⁷ Brief for Appellees, pp. 7-8.

⁴⁸ "The petitioner made no offer or attempt to show that the value fixed by the Commission did not represent either the true depreciated legitimate cost or the true depreciated actual cost" (R. 620).

it pleaded for an opportunity to be heard. The petition was denied. In its petition for a writ of review in the court below appellant pointed out that under its actual operating experience for 1943 the Commission's order would result in an operating loss (R. 11-12). We have pointed out in this Court⁴⁹ that appellants actual experience shows that if it is compelled to account on the basis of a 6-cent fare for the period from the effective date of the order to the date of the sale of its properties, it will suffer an actual operating loss of approximately \$360,000.

At pages 44-45 of their brief, appellees append a statement about "the hopelessly confused position of appellant with regard to any satisfactory depreciation reserve." They refer to accrued depreciation for tax purposes as compared with appropriations to the depreciation reserve.

We do not understand the relevance of this discussion. If it is intended as a suggestion that the historical cost of appellant's properties, less depreciation, would be some figure comparable to the \$7,950,000 adopted as appellant's rate base by the Commission, the suggestion is unwarranted. Commission Exhibit 10 notes that the Commission's historical valuation of appellant's properties as of June 30, 1920, brought forward on the basis of appellant's annual reports, gives a value for road and equipment of \$25,343,543 (R. 243). However, the record contains no valuation study. Commissioner Sachse points out at R. 99-100 that there is no evidence in the record to show the present value of appellant's properties on an historical cost less depreciation basis.

⁴⁹ Brief for Appell 6, footnote 6.

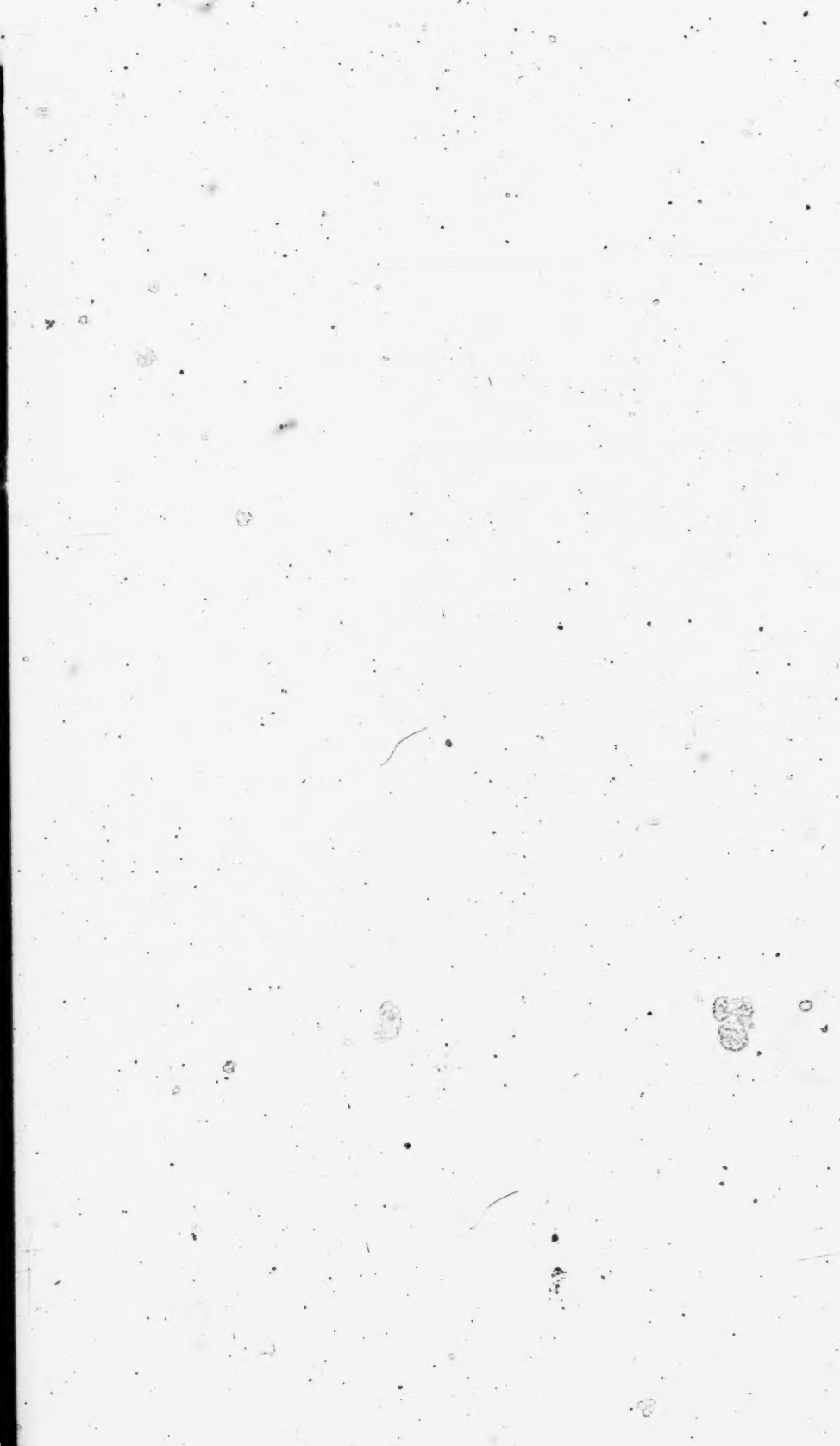
We respectfully submit that the judgment of the
Supreme Court of California should be reversed.

Dated February 23, 1945.

Respectfully submitted;

CYRIL APPEL,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
HENRY G. HAYES,
Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,
Of Counsel.



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CHARLES ELMORE DROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 510-511

MARKET STREET RAILWAY COMPANY,

Appellant,

vs.

**RAILROAD COMMISSION OF THE STATE OF CALI-
FORNIA, FRANCK R. HAVENNER, C. C. BAKER,
ET AL., ETC.**

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM**

**✓ EVERETT C. McKEAGE,
RODERICK B. CASSIDY,
WYMAN C. KNAPP,
FRANK B. AUSTIN,
JOHN M. GREGORY,**

Counsel for Appellees.



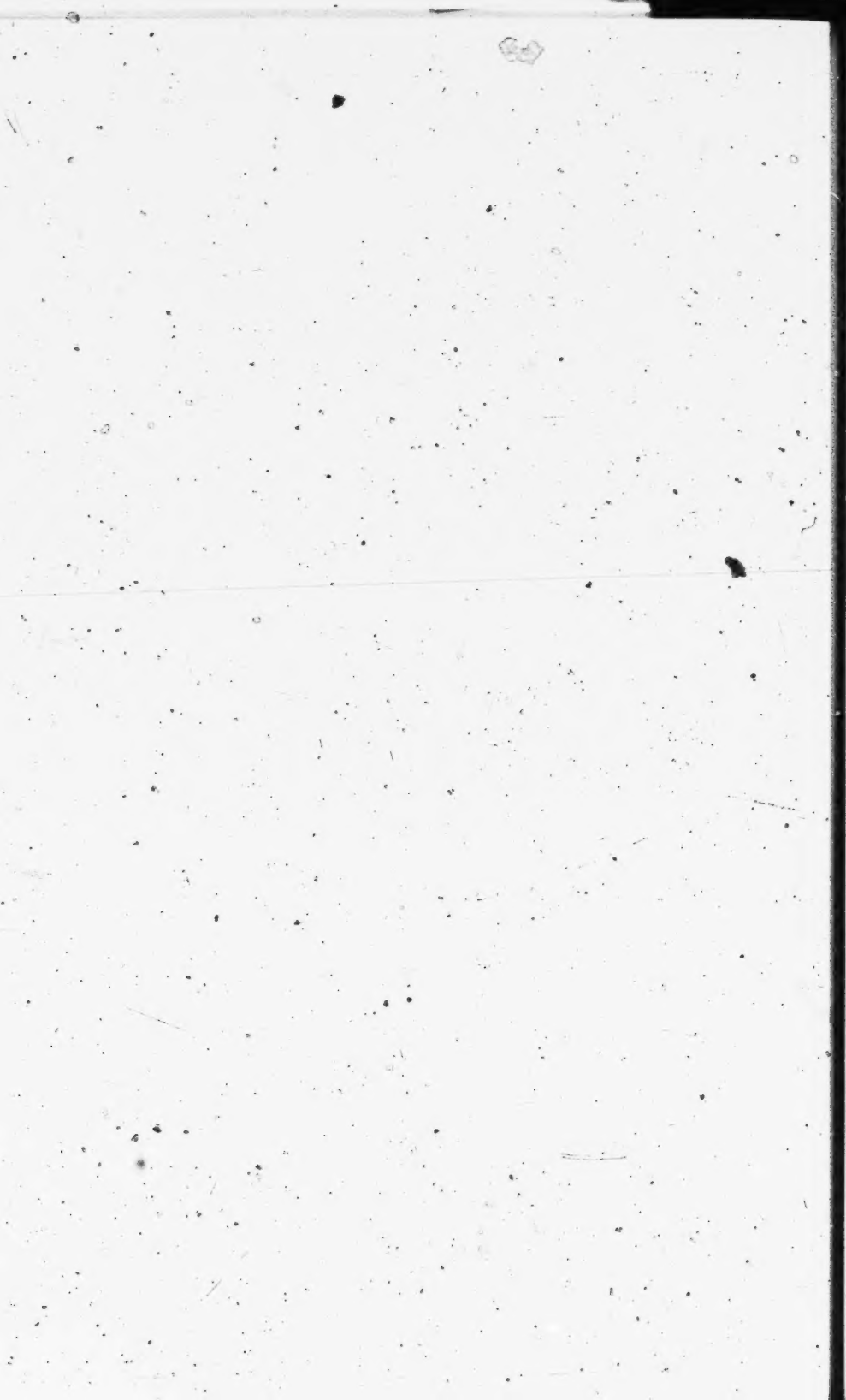
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 510-511

MARKET STREET RAILWAY COMPANY,

vs.

Appellant,

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND FRANCK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE AND FRANK W. CLARK, THE MEMBERS OF AND CONSTITUTING THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Appellees.

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Come now appellees and file their statement in opposition to appellant's statement as to jurisdiction and hereby move the Court to dismiss the appeal herein or affirm the decision and judgment of the Supreme Court of the State of California, from which decision and judgment said appeal is taken.

Appellant Was Accorded Due Process of Law

Appellant complains that it was not placed on notice that reasonableness of rates was an issue in the proceeding be-

fore the appellee Railroad Commission. This contention is wholly without merit. The order instituting the investigation and proceeding out of which the rate reduction order in question issued contained the following provision:

"The Commission believing that public interest demands an inquiry into the *reasonableness of the rates*, as well as the sufficiency and adequacy of the service rendered by the Market Street Railway Company; therefore, good cause appearing,

"It Is Ordered that an investigation be and hereby is instituted upon the Commission's own motion into the *reasonableness of the rates*, charges, classifications, rules and regulations of the Market Street Railway Company, and also into the reasonableness, sufficiency and adequacy of the operations, service and facilities of said company; * * *." (Emphasis supplied.) (P. 1 of Ex. A, Petitioner's Petition for Writ of Review.)

Also, the caption and title of this proceeding referred to the investigation as one involving the *reasonableness of the rates* and charges of appellant.

When this proceeding was called for its first hearing, the presiding Commissioner made the following statement:

"The Commission will be in order. This is the time and place set for the hearing in Case No. 4680, in the matter of the Commission's investigation into the *reasonableness of the rates* and charges and into the sufficiency and adequacy of the operations, service and facilities of the Market Street Railway Company." (Emphasis supplied.) (P. 2, Reporter's Transcript.)

This Court has held that an order instituting an investigation into the rates and charges of a public utility is sufficient to apprise such utility that the reasonableness of its rates is in issue even though the term "reasonableness" does not appear in said order, as is the case in the instant

der instituting the investigation and proceeding involved therein. In the case of *American Toll Bridge Company v. Railroad Commission of California*, 307 U. S. 486, at p. 492, this Court held as follows:

“The commission initiated the proceeding entitled ‘In the matter of the investigation upon the commission’s own motion, into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company covering its operations of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano;’ gave appellant notice that the investigation would extend to tolls for use of that bridge; . . .”

The following authorities are in line with the above holding:

Nat’l Labor R. Board v. Mackay Radio & Tel. Co., 304 U. S. 333, 349;

Railroad Commission of California v. Pacific Gas and Electric Co., 302 U. S. 388, 392, 393;

Northwestern Bell Tel. Co. v. Nebraska State Ry. Co., 297 U. S. 471, 476, 477;

People ex rel. N. Y. & Queens Gas Co. v. McCall, 245 U. S. 345, 348, 349;

Asbury Truck Co. v. Railroad Commission of California, 52 F. (2d) 263; (Affirmed per curiam, 287 U. S. 570).

In the latter case the Court said, at page 268:

“To meet the requirements of due process of law, an administrative body, such as the defendant commission, need not follow any particular form of procedure. While it is essential that before one’s rights are determined a hearing of some kind must have been accorded, it is sufficient if the party affected is apprised of the nature of the hearing and is afforded the op-

portunity to offer evidence and to examine that of the opposition."

Appellant claims that the experimental nature of the rate reduction order involved herein denies it due process of law. This claim is likewise wholly without merit and has been decided adversely to the appellant by this Court in the case of *Clark's Ferry Bridge Co. v. Public Service Commission*, 291 U. S. 227, 241.

Mere infirmity in the procedure adopted by a regulatory commission is not sufficient to amount to a denial of due process. Mr. Chief Justice Hughes, speaking for this Court, in the case of *Railroad Commission of California v. Pacific Gas and Electric Company*, 302 U. S. 388, 394-395, and quoting with approval from the decision in the case of *West Ohio Gas Company v. Public Utilities Commission*, 294 U. S. 63, 70, lays down this rule as follows:

" 'Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the *totality* of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*So. R. Co. v. Virginia*, 290 U. S. 190; 78 L. ed. 260, 54 S. Ct. 148) to challenge the result, *there is no denial of due process, though the proceeding is shot through with irregularity or error.*' " (Emphasis supplied.)

We do not concede that any irregularity or error was committed by the appellee Railroad Commission in the proceeding before it but, if there had been such error, it would not constitute a denial of due process if no confiscation be shown.

Appellant admits that it received due service of a copy of the order instituting the investigation and proceeding herein concerned. Therefore, it is submitted that the claim made by appellant that it was not placed upon notice that

reasonableness of rates would be an issue is completely without substance and the face of the record reflects that fact. Therefore, no substantial Federal question is presented on this alleged issue.

Order of Appellee Railroad Commission Did Not Result in Confiscation of Appellant's Property

The allegation of appellant that the order of appellee Railroad Commission works a confiscation of its property is not supported by the record and creates no substantial Federal question. Appellees cite the following authorities in support of this proposition:

- Federal Power Commission v. Hope Natural Gas Co.*, 88 L. ed. Adv. Ops. 276, 283;
- Natural Gas Pipeline Co. v. Federal Power Commission*, 315 U. S. 575;
- Railroad Commission of California v. Pacific Gas and Electric Company*, 302 U. S. 388, 394;
- *Los Angeles Gas and Electric Corp. v. Railroad Commission of California*, 289 U. S. 287, 304, 305;
- West Ohio Gas Co. v. Public Utilities Commission*, 294 U. S. 63, 70;
- Lindheimer v. Ill. Bell Telephone Co.*, 292 U. S. 151, 175;
- San Diego L. & T. Co. v. Jasper*, 189 U. S. 439, 441;
- Market Street Railway Co. v. Railroad Commission of California*, 24 Adv. Cal. Reps. 377.

Mr. Justice Holmes, speaking for this Court in the case of *San Diego L. & T. Co. v. Jasper*, 189 U. S. at 441, puts the rule contended for by appellees in the following concise language:

“••• In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough

if we cannot say that it was impossible for a fair-minded board to come to the result which was reached." (Emphasis supplied.)

It is therefore submitted that under the rule laid down by this Court in the case of *Federal Power Commission v. Hope Natural Gas Co.*, supra, appellant has failed to carry the burden of proving confiscation by clear and convincing evidence and has failed to overcome the legal presumption of the validity and correctness of the rate reduction order herein involved and, this being true, has failed to show the existence of a substantial Federal question in this regard.

The Appeal Herein Is Without Merit, There Being No Substantial Federal Question Involved

Appellees contend that the record in this case discloses no substantial Federal question and, therefore, this Court is without jurisdiction of this cause. It is therefore submitted that appellees' motion herein to dismiss said appeal or affirm the judgment of the Supreme Court of California should be granted.

Wherefore, appellees pray that this Court refuse to note jurisdiction in this cause and that said appellees' motion to dismiss said appeal or affirm said judgment be granted.

Dated, San Francisco, California, this 3rd day of August, 1944.

EVERETT C. McKEAGE,
RODERICK B. CASSIDY,
WYMAN C. KNAPP,
FRANK B. AUSTIN,
JOHN M. GREGORY,

*Attorneys for Railroad Commission
of the State of California.*

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In the Supreme Court

OF THE
United States

Office - Supreme Court, U. S.

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CHARLES ELMORE OROPLEY
CLERK

OCTOBER TERM, 1944

Nos. 510 and 511

MARKET STREET RAILWAY COMPANY,

Appellant,

VS.

RAILROAD COMMISSION OF THE STATE OF CALI-
FORNIA and FRANCK R. HAVENNER, C. C.
BAKER, JUSTUS F. CRAEMER, RICHARD
SACHSE and FRANK W. CLARK, the Mem-
bers of and Constituting the Railroad
Commission of the State of California,

Appellees.

BRIEF FOR APPELLEES.

✓ EVERETT C. McKEAGE,

RODERICK B. CASSIDY,

✓ WYMAN C. KNAPP,

FRANK B. AUSTIN,

JOHN M. GREGORY,

State Building, San Francisco 2, California,

Counsel for Appellees.

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BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE and FRANK W. CLARK, the Members of and Constituting the Railroad Commission of the State of California,

Appellees.

BRIEF FOR APPELLEES.

JURISDICTION.

Appellees here reiterate their position taken in their statement opposing jurisdiction and their motion to dismiss or affirm and by reference incorporate herein the argument and authorities cited in said statement and motion, and hereby move this Court to dismiss this case or affirm the judgment of the lower court.

**EVENTS OCCURRING SINCE THE RENDITION OF THE
ORDER OF THE RAILROAD COMMISSION AND OF
THE DECISION OF THE SUPREME COURT OF CALI-
FORNIA.**

While the matters adverted to by the appellant under this heading are outside the record, nevertheless, appellees take the position that these facts should be taken into consideration by this Court in disposing of this case. Appellees do not want it understood that they subscribe to the propositions advanced and the argument made under this heading by appellant at pages 3 to 10 of its brief. Appellees point out that the appellant caused the sale of its properties to be made to the City and County of San Francisco and that it cannot complain of any alleged prejudice which that act on its part may have caused it. It would be indeed a novel principle of law that would permit a party to commit an act and then to claim that such act prejudiced such party and, therefore, someone else should suffer the prejudice thereby caused rather than the party committing such act. Appellees assert that the authorities cited by appellant under this heading have no application to the situation presented in the instant case and that this Court, in disposing of this case, would be free to make whatever decision that justice and equity might require. The fact that the City and County of San Francisco has established a 7-cent fare for the purpose of enabling it to purchase the properties of the appellant could have no possible bearing upon the order made by the Railroad Commission or the affirmance of such order by the Supreme Court of California. The documents attached to appellant's brief conclusively show that the reason for the establishment of the 7-cent fare was for the

purpose of enabling the City and County of San Francisco to purchase the properties of the appellant and the implication is clear that the intent is that, after sufficient revenue has been earned under a 7-cent fare to pay the purchase price of these properties, the 7-cent fare will be reduced. (pp. 8-33, particularly pp. 13 and 26 of Appendix of Appellant's Brief.)

With regard to the action that this Court might take in connection with the circumstances and events occurring since the rendition of the order of the Railroad Commission and the decision by the Supreme Court of California, it is well to keep in mind the decision of this Court in the case of *Interstate Commerce Commission v. City of Jersey City* (decided May 29, 1944), 88 L. ed. (Adv. Ops.) 1064 at p. 1070, where this Court made the following pertinent observation:

“* * * If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that *the discretion to be invoked was that of the body making the order, and not that of a reviewing body.*” (Emphasis supplied.)

STATEMENT OF THE CASE.

Appellant's statement of the case when considered in the light of the actual facts is, to say the least, extraordinary. Appellant contends that the Railroad Commission denied to appellant the most elementary rudiments of procedural due process; that it proceeded in the total absence of evidence and that the Supreme Court of California, consisting of seven justices, unanimously approved of such unlawful conduct by affirming the rate reduction order issued by said Railroad Commission. Surely, such an extravagant position as appellant takes could hardly recommend itself to this Court in light of the obvious infirmities of appellant's position when considered upon the facts of record.

After hearings occurring on May 10, July 15 and September 15, 1943, said Railroad Commission on November 30, 1943, issued the rate reduction order involved in this proceeding (R. 59) whereby it reduced appellant's rates from 7 cents to 6 cents. Appellant duly filed a petition for rehearing and two days of argument (December 21 and 23, 1943) were had on said petition, which was denied January 12, 1944. In denying said petition for a rehearing, said Commission filed a comprehensive decision setting out fully its reasons for such denial. (R. 114.) By successive orders, the effective date of said rate reduction order was extended to February 29, 1944, without requiring appellant to account for the excess rate charge collected, which amounted to approximately \$144,000.

Appellant, in its statement of the case, asserts that said Railroad Commission based its decision upon evidence wholly outside the record. Such a charge seems to come

with poor grace from the appellant, who has indulged very generously in the practice of going outside the record in its brief filed with this Court. As an example, we cite the assertions appearing in the first paragraph of page 31 and the contents of footnote 53 at page 51 of appellant's brief setting out alleged labor statistics. Also, appellant seeks to have reviewed by this Court the entire proceeding involving the sale of appellant's properties to the City and County of San Francisco, all of which are matters completely outside the record in this case. While appellees have no objection to the consideration of the matters concerning the sale of appellant's properties to said City and County, nevertheless, they are matters outside the record and matters which appellant seeks to have considered for the specific purpose of enhancing appellant's position before this Court.

At page 16 of appellant's brief, it is claimed that the operating results figures used by the Commission in arriving at a fair rate of return appear nowhere in the record and can be derived from no figures in the record. This assertion is simply not true. These figures, as will hereafter be shown, *were legitimate computations permissibly deduced from the facts and figures contained in the record.* Rate-making is, of necessity, *prospective* in its nature and *future rates must be based upon anticipated future operating results*, which, in turn, must be based upon past experience and performance. How could it possibly be otherwise?

On page 12 of appellant's brief, the two proposed sales of appellant's properties to the City and County of San Francisco for a price of \$7,950,000, one in September 1942

and the other in March 1943, are adverted to. The two resolutions of the Board of Directors of appellant authorizing these proposed sales appear in the record at pages 163 to 165. It will there be noted that the Board of Directors definitely authorized the sale of appellant's properties for the sum of \$7,950,000 and in the resolution of September 24, 1942, stated:

"* * * The President" (of appellant) "stated further that the price mentioned had been agreed upon after lengthy negotiations extending over a period of about two years and is the best price obtainable from the City and County of San Francisco for the operative properties of the Company."

In the resolution of March 25, 1943, the following statement appears:

"* * * The President" (of appellant) "also stated that the price mentioned is the amount that had been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor."

In each resolution, the officers of appellant were unqualifiedly authorized and directed to perform all necessary and proper acts in order to carry out and complete the sale of the operative properties of appellant to the City and County of San Francisco for the said sum of \$7,950,000. It is true that the voters of the City and County of San Francisco twice refused to purchase the properties of appellant, and it is also true that at a third election the voters did agree to purchase appellant's properties for the sum of

\$7,500,000. The fact that the stockholders of appellant had not been consulted concerning the first two offers of sale is *wholly immaterial* so far as the fair value of appellant's properties is concerned. The important point to be kept in mind is that the Board of Directors of appellant did set \$7,950,000 as the price for the properties of appellant, so far as a sale was concerned. This act on the part of said Board was very important evidence as to value, notwithstanding the fact that the voters of the City and County of San Francisco rejected both of these offers of sale and notwithstanding the fact, if it be a fact, that the stockholders of appellant were not formally consulted. The fact remains that these properties were later sold for a less sum of money with the concurrence of the voters of the City and County of San Francisco and the stockholders of appellant.

At page 18 of its brief, appellant asserts that the use by the Railroad Commission of the figure of \$7,950,000 as a rate base is of subordinate importance and that it emphasized that fact in the court below. This assertion on appellant's part is rather amusing in light of its strenuous argument to the exact contrary in its petition for a rehearing before said Railroad Commission and in its briefs and oral argument before the court below. *Obviously, appellant must now take its present position in face of the bald fact that it has sold its properties to the City and County of San Francisco for \$7,500,000, which is \$450,000 less than was allowed to it as a rate base by the Railroad Commission.* It is significant that appellant, at no time, ever suggested a rate base figure or fair value that should be allowed for its properties for rate-making purposes. It

contented itself with criticising the rate base set by the Commission.

The figure of \$7,950,000 used as a rate base was accepted as a figure representing market value and was more reliable than any figure that might be arrived at by the employment of the conventional formulae for ascertaining fair value.

In rate proceedings regulatory agencies are generally faced with the problem of the methods or means by which to arrive at a judgment of the fair value of utility properties. In such cases it is necessary for the agency to adopt some rate base figure in order to test the reasonableness of rates. The difficulty lies in the ascertainment of the proper rate based under the circumstances present in particular cases. But neither the Legislature nor the courts have restricted the Commission to the use of any particular formula. In performing the legislative function of rate-making, the utility commissions have been left free, "within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances." (*Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586. See also *Knoxville v. Knoxville Water Company*, 212 U.S. 1; *San Joaquin L. & P. Corp. v. Railroad Commission*, 175 Cal. 74, 76.)

In so far as utility properties are concerned, "the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available." (*L. A. Gas & E. Corp. v. Railroad Commission*, 289 U.S. 287, 305.) Utility property is not ordinarily the subject of barter and

sale. But in this proceeding the Commission had before it appellant's twice-repeated offer to dispose of its properties for \$7,950,000, and used that amount as an appropriate rate base in light of the record before it. The Commission considered that these offers to sell, made by appellant in good faith, represented appellant's own judgment of the market or exchange value of appellant's properties.

The formulae used in arriving at a "fair value" of the operative properties of a utility are *but a substitute used in default of the existence of market value*. As pointed out by Oscar L. Pond in his exhaustive work, *Public Utilities*, Volume 2, present value is the true test. Mr. Pond states (p. 1120):

"While all accurate available evidence of the original cost, as well as the cost of reproduction is desirable and helpful in determining the extent of the actual investment necessary to render the service in any particular case, neither these nor the amount of capitalization are conclusive. *The actual present market value of the plant or its worth as a going concern is the ultimate practical basis for determining the value of the investment upon which to fix a rate which will produce a fair return.*" (Emphasis supplied.)

Thus, if market value were ascertainable, no need would exist for the judicial formulae for ascertaining fair value. "Market value" would be "fair value" and the application of the several judicially defined standards would become unnecessary. When the reason for the rule ceases, so does the rule. That is the exact situation in the instant case. The owner of these properties twice stated publicly that it would sell the same for \$7,950,000 and twice offered to sell

such properties to the people of San Francisco for that price. In the circumstances, that price represented the market value of these properties.

At pages 13 to 17 of appellant's brief, the claim is made that appellant had no notice that *reasonableness of rates* would be an issue involved in the proceeding before said Railroad Commission out of which the rate reduction order issued. This statement is unqualifiedly erroneous. The order instituting the investigation both in its caption and also in its body (R. 56) stated that the Commission's investigation would involve "*the reasonableness of rates, charges, classifications, rules and regulations of the Market Street Railway Company.*" (Emphasis supplied.) Each and every caption of the formal papers filed in this proceeding embodied therein the expression "reasonableness of rates" and the presiding Commissioner at the opening of the hearing of this proceeding on May 10, 1943 (R. 366) stated, among other things, that the hearing would involve "the reasonableness of the rates" of appellant. At the hearing on May 10, 1943, Mr. Hunter, Assistant Director of Transportation of the Railroad Commission, testified in part as follows (R. 368 to 370):

"* * * The information that the Commission had before it when it instituted this investigation may be briefly summarized as follows—I will first refer to annual reports that are filed with the Commission.

"First we have the regular annual report, forms of which are furnished all privately owned public utilities and these public utilities are required to supply the desired information. That, of course, is a continuing record over a long period of time. In addition to that

the Commission receives annual reports from this carrier, which is the copies of annual reports to its stockholders. This annual report is required to be filed pursuant to the terms of General Order 65.

"In addition to the annual reports the Market Street Railway files monthly reports with the Commission. These monthly reports show considerable detail with respect to the operating results of that carrier. Under one heading 'Income Accounts' it shows the situation for the current month, the calendar year, the year ending the current month and the same information is shown for the preceding year.

Another section of this monthly report is given to the balance sheet or financial statement; that is based upon the results of the current month, preceding month and the same information for the last year.

"The next section is an analysis of bond and note indebtedness. First it takes up the matter of the situation as at the end of the current month. Another chapter is devoted to preferred and common stock issues.

"The last portion of this monthly report is given to a construction statement showing original cost of physical properties based upon the valuation as of April 1st, 1921. This valuation is brought up to date by adding additions and betterments and eliminating retirements."

"I will now refer to reports that were before the Commission and prepared by the Commission's staff. First, was a report—and I might say I will only include those that are of recent date—a report dated August 31, 1942, which is entitled, 'Report on present market value of the Market Street Railway Company, San Francisco.' This report was prepared pursuant to a representation to the Commission by a number of

the members of the Board of Supervisors of San Francisco to the effect that the Board desired the assistance of the Commission in attempting to arrive at a fair market price for the properties, as the City was then considering the purchase of the Market Street system.

"Another report—and this is the last report prepared by the Engineering Department—dated November 16, 1942, and that report is entitled, 'Study to determine the operating results with the same fare on the line of the Market Street Railway and the Municipal Railway system of San Francisco.' *The primary purpose of this report was to give the Commission the benefit of certain studies dealing with the estimated operating results that would obtain in employing a uniform fare structure; each of them provided for a universal transfer. The estimates were based upon a 6-cent fare for both properties; this study followed immediately after the election on November 3rd, wherein the voters refused to purchase the property for \$7,950,000.*

"In addition to these reports to which I have just referred the Engineering Department carries a continuing running chart—continuing running charts on the operating results of all street car companies in this State. These running charts show operating revenues, operating income, taxes, depreciation, operating expenses, revenue passengers. Also shows the fare changes, if any, during the period. Now, those charts have been carried forward since 1920 to date. In addition to the carriers operating under the Commission's jurisdiction we have the same information for the municipal lines.

"In addition to the reports furnished the Commission by the Transportation Department the Depart-

ment of Finance and Accounts keeps the Commission advised by periodic reports showing the results of certain operations from information in their possession.

"I have tried to briefly touch on the high lights or cross-section of this information that the Commission had before it before the investigation was instituted, April 22nd."

"At this time the Engineering Department of the Commission's Transportation Department is prepared to present certain information now available with the understanding that further studies and reports will be prepared and presented later dealing in more detail with the elements that should be considered in connection with the investigation now before the Commission. These further studies will include operating revenues, and might I state here the information to which I have referred with respect to the operating results have, to a considerable extent, been taken from the Company's records; it is our plan in future studies to perhaps go into those accounts pretty much on our own basis and determine whether or not, in our opinion, there should be any changes in those items. Continuing now, we will investigate operating expenses, taxes, depreciation, studies on rate base figures, the estimated operating results that would obtain under different fare structures. In addition to the information that the Transportation Department is ready to present the Department of Finance and Accounts is now prepared to present a report showing the Company's assets, liabilities, profit and loss and income accounts for the past five years." (Emphasis supplied.)

Pursuant to the statement made by the witness Hunter at the May 10, 1943 hearing before said Railroad Commis-

sion, this proposed material was received in evidence at the July 15, 1943 hearing, particularly Exhibit 10, which is a comprehensive study of the history of appellant as to all phases of its operations. (R. 165 to 261.) Space would not permit the analyzation of all of the elements of Exhibit 10 but it does cover, together with the other exhibits introduced in evidence, the entire range of subjects that are conventionally and usually covered in rate proceedings. At the hearing of July 15, 1943, before the Railroad Commission, contemporaneously with the introduction into evidence of Exhibit 10, Mr. Mors, the Transportation Research Engineer of the Railroad Commission, testified in part as follows: (R. 408)

"The purpose of the report" (referring to Exhibit 10) "is to present a brief historical summary of the financial results of operation of Market Street Railway Company over the 21 years ending December 31, 1942, with particular reference to the last few years and with some consideration of results for the first few months of 1943.

"The report consists, primarily, of an analysis of the Company's operating expenses, depreciation practices, including a comparison of operating expense trends with trends of the corresponding expenses in the San Francisco Municipal Railway and in the Los Angeles Railway Corporation. Revenues are analyzed to determine the effect of recent fare increases and other factors upon the revenue and traffic of Market Street Railway and upon the distribution of revenue and traffic between Market Street Railway and the Municipal Railway.

"A section is devoted to discussion of the road and equipment account and another section to a brief analysis of taxes.

“Pertinent information regarding the Company’s historical background, organization and financial control and present operations are also included.” (Emphasis supplied.)

Appellees assert that the foregoing indicated elements contained in Exhibit 10 are the basic elements involved in any rate proceeding. If appellant did not understand that such evidence is of the very essence of a rate proceeding, then, it must be admitted that appellant has only its ignorance to blame for misunderstanding the aim and the purport of the proceeding in question.

Appellees might point out at great length the many and voluminous exhibits received in evidence in the proceeding before said Railroad Commission but the immediately foregoing evidence adverted to conclusively demonstrates that each and every element involved in a rate proceeding was present in the proceeding in question and that appellant had ample and notorious notice that such issues were involved.

On page 33 of appellant’s brief certain testimony of the witness Hunter is quoted (R. 467) to the effect that the investigation *did not analyze the rate situation*. The witness Hunter’s testimony so referred to was directed to Exhibit 17 which dealt exclusively with service and bore the following caption: “Report Dealing With Service on Market Street Railway.” (R. 279.) *The witness Hunter was not referring to the entire proceeding and was addressing himself to the contents of Exhibit 17, which he had before him at the time he was testifying.*

This is a fair sample of the manner in which appellant has treated this record by stating disconnected bits thereof

wrenched out of the context without stating the entire record on the particular point in question.

Also, at pages 23 to 26 of its brief, appellant refers to certain statements made by certain of the members of said Railroad Commission during the progress of the proceeding in question, alleging that these statements indicated that the issue of the reasonableness of rates was not involved therein. These statements do not support the position taken by the appellant and so show on their face. In any event, the reasoning of some witness or some Commissioner as to what is or is not an issue in a proceeding would be immaterial if, in fact, the evidence received in such proceeding is sufficient upon which to base the particular issue in question. It is judicial or administrative action that this Court reviews, not reasoning or mental processes employed in arriving at such action. (*Morgan v. U. S.*, 304 U.S. 1, 18; 82 L. ed. 1129, 1132.) However, appellees do not concede that any statement made by any Commissioner or any witness during the proceeding in question excluded the issue of the reasonableness of rates or even had a tendency to mislead the appellant as to the existence of that particular issue.

**PRESUMPTION OF LEGAL CORRECTNESS AND VALIDITY
ATTACHES TO DECISIONS AND ORDERS OF THE
RAILROAD COMMISSION.**

It is elementary that the decisions of a public service commission are presumptively correct and valid when attacked in a court. In the case of *Federal Power Commission v. Hope Natural Gas Company*, 88 L. ed. (Adv.

Ops.) 276 at p. 283, this Court pointed out that orders of a public regulatory commission are presumptively correct. Said this Court:

“ * * * Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a *presumption of validity*. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Cf. *Railroad Commission v. Cumberland Teleph. & Teleg. Co.*, 212 US 414, 53 L ed 577, 29 S Ct 357; *Lindheimer v. Illinois Tel Co.*, supra 292 US pp 164, 169, 78 L ed 1191, 1193, 54 S Ct 658; *Railroad Commission v. Pacific Gas & E. Co.*, 302 US 388, 401, 82 L ed 319, 326, 58 S Ct 334.” (Emphasis supplied.)

Appellees contend that there is no burden cast upon them to produce one figure or one fact in defense of the rate reduction order involved in this proceeding until such time as appellant has made a *prima facie* showing to this Court that said rate order is invalid. Then, and only then, are appellees called upon to defend the order issued against appellant. As was said in the *Hope Natural Gas* case, supra:

“ * * * the Commission's order does not become suspect by reason of the fact that it is challenged.” (Emphasis supplied.)

The rule announced in the *Hope Natural Gas* case, supra, is no new rule of law. It has always been the law in regard to decisions and orders of public regulatory bodies.

In the case of *San Diego L. & T. Co. v. Jasper*, 189 U.S. 439, 441, Mr. Justice Holmes, speaking for this Court, stated:

“••• In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we cannot say that it was impossible for a fair-minded board to come to the result which was reached.” (Emphasis supplied.)

Quoting with approval the decision in the case of *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 70, Mr. Chief Justice Hughes, speaking for this Court, had this to say in the *Pacific Gas and Electric Company* case (302 U.S. 388, at pages 394, 395):

“Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern R. Co. v. Virginia*, 290 U.S. 190, 78 L. ed. 260, 54 S. Ct. 148) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error.” (Emphasis supplied.)

Again, in the case of *Lindheimer v. Ill. Bell Tel. Co.*, 292 U.S. 151, 175, Mr. Chief Justice Hughes, speaking for this Court, observed as follows:

“••• It is not the function of the court to attempt to construct out of this voluminous record independent calculations to invalidate the challenged rates. It is

enough that the rates have been established by competent authority and that their invalidity has not been satisfactorily proved." (Emphasis supplied.)

Quoting again from the *Hope Natural Gas* case, supra, at page 283:

"It is not theory but the impact of the rate order which counts."

It is elementary, and this Court has held it to be the law, that in a proceeding of this nature the only question for determination by the Court is one of confiscation.

Railroad Commission v. Pacific Gas and Electric Co.,
302 U.S. 388, 394;

Los Angeles Gas and Electric Corp. v. Railroad Commission, 289 U.S. 287, 304, 305;

West Ohio Gas Co. v. Public Utilities Commission,
294 U.S. 63, 70.

Appellees submit that unless the appellant has established by substantial and convincing showing the invalidity of the rate order involved in this proceeding, judicial inquiry by this Court is at an end and, further, that the burden of overthrowing the legal presumption of the validity of said rate order rests heavily upon appellant.

ARGUMENT.

I.

APPELLANT WAS ACCORDED PROCEDURAL DUE PROCESS AT EVERY STAGE OF THE RATE PROCEEDING IN QUESTION.

Appellees assert that the evidence set out in the immediately foregoing statement of the case conclusively shows that appellant was accorded, to the fullest extent, procedural due process of law in the rate proceeding here under attack, and that it was accorded the fullest and most complete notice that the reasonableness of its rates was an issue involved in the proceeding. Furthermore, this Court has held in a similar situation that the type of order instituting an investigation as was employed in the instant proceeding gives to a party ample notice that the reasonableness of rates will be an issue in the proceeding.

This Court held in the case of *American Toll Bridge Company v. Railroad Commission of California*, 307 U.S. 486, at page 492, as follows:

"The Commission initiated the proceeding, entitled 'In the matter of the investigation upon the commission's own motion, into the rates, charges, contracts, classification, rules and regulations of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano;' gave appellant notice that the investigation would extend to tolls for use of that bridge; * * *."

The order instituting the investigation in the instant case referred not only to rates but to *reasonableness of rates* which is a much stronger and much more informative term than the term "rates."

In support of this proposition, we also refer to the following authorities:

National Labor R. Board v. Mackay Radio & Tel. Co., 304 U.S. 333, 349;

Railroad Commission of California v. P. G. & E. Co., 302 U.S. 388, 392, 393;

Northwestern Bell Tel. Co. v. Nebraska State Ry. Commission, 297 U.S. 471, 476, 477;

People ex rel. N. Y. & Queens Gas. Co. v. McCall, 245 U.S. 345, 348, 349;

Asbury Truck Co. v. Railroad Commission of California, 52 F. (2d) 263; (Affirmed per curiam, 287 U.S. 570.)

In the latter case, the Court said, at page 268:

"To meet the requirements of due process of law, an administrative body, such as the defendant commission, need not follow any particular form of procedure. While it is essential that before one's rights are determined, a hearing of some kind must have been accorded, it is sufficient if the party affected is apprised of the nature of the hearing and is afforded the opportunity to offer evidence and to examine that of the opposition."

In light of the evidence heretofore pointed out and the authorities hereinabove cited, appellees submit that each and every element of procedural due process was accorded to appellant.

While appellant apparently strongly relies upon the two *Morgan* cases (*Morgan v. United States*, 298 U.S. 468; *Morgan v. United States*, 304 U.S. 1), appellees assert that the rule announced in those two cases is in complete har-

mony with the conduct of said Railroad Commission in the instant proceeding. In those cases this Court was concerned primarily with the method by which the officer charged with the responsibility of determining the issues (the Secretary of Agriculture) had arrived at his decision. The procedure therein condemned by this Court is not present in this case. The Commission, in the instant case, heard all the evidence and therefore did not violate the rule that "He who decides must also hear."

II.

RATE REDUCTION ORDER IS FULLY SUPPORTED BY THE EVIDENCE.

In Part II of its brief, appellant charges that the Commission's order is invalid under the due process clause "because it is unsupported by evidence and is based upon the Commission's speculation and conjecture." The assertions in support of this unequivocal charge, made in the face of the Commission's decision and the unanimous opinion of the Supreme Court of the State of California, in the main are (a) that the Commission found the 7-cent fare unreasonable without having in the record revenue or expense figures upon which it relied (Appellant's Brief, p. 39); (b) that revenue and expense estimates under the ordered 6-cent fare were not of record and could not be derived from evidence of record (Appellant's Brief, p. 40); (c) that no consideration was given by the Commission to allocating traffic, revenues, and expenses as between San Francisco operation and appellant's suburban lines, and that, therefore, there is no basis in the record for any

test of the reasonableness of the ordered rate (Appellant's Brief, p. 45); (d) that the Commission's expectations of future revenue, future expense, and future traffic, made without evidence, form the foundation of the Commission's order (Appellant's Brief, p. 45); and (e) that the Commission asserted the right to use its expert knowledge in supplying missing facts (Appellant's Brief, p. 46).

The record is not deficient, as alleged, in that there is evidence of record (a) to support a finding that the 7-cent fare is unreasonable, and (b) to support findings and a conclusion that for the future a 6-cent fare would be just and reasonable.

In the face of the evidence of record we can but assume that appellant's underlying complaint against the approach taken by the Commission is that time-worn valuation formulae were not spread on the record as a background for the Commission's deliberations. Hence, it is said that the Commission's order is based upon speculation and conjecture; due process of law has not been accorded.

The ordered reduction speaks *in futuro*. And future estimates of revenue, expenses, and earnings must be adjudged in light of projections made by experts and based upon the utility's experience of the present and the past. As stated by the California Supreme Court:

"The commission has the experience and the data at hand from which to cull the estimates of probable increase in traffic under a reduced fare and improved service, and of the probable operating revenues, expenses, and other costs." (R. 620.)

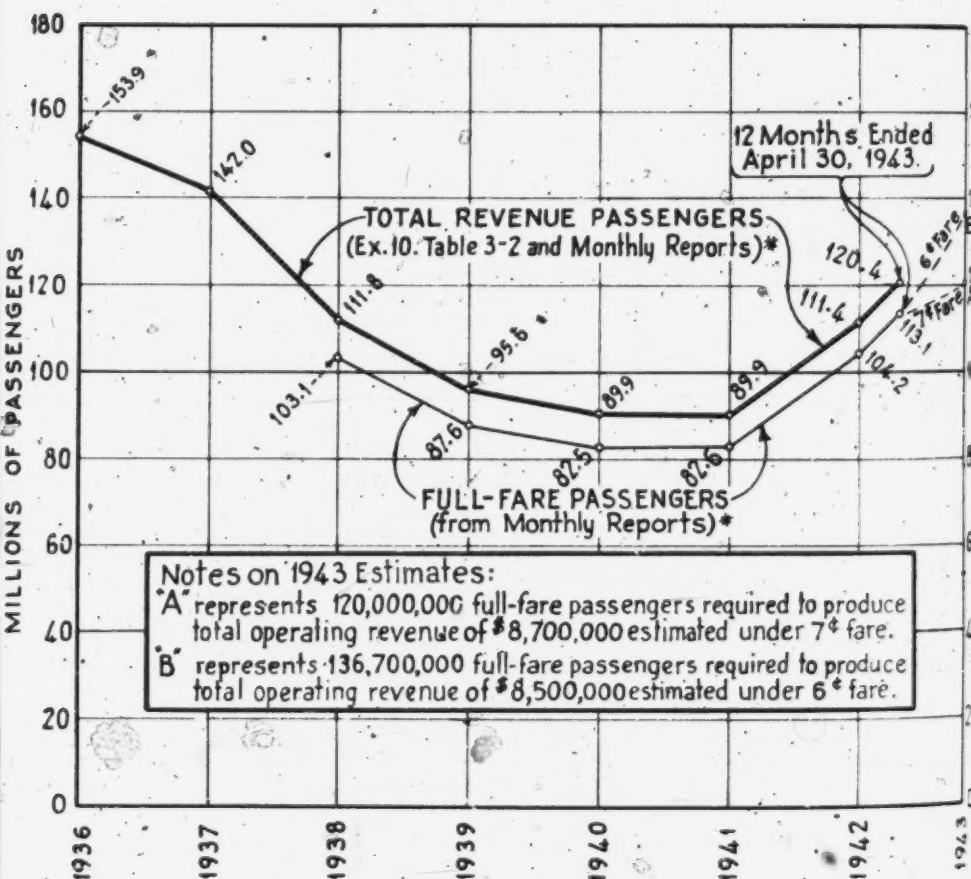
In fairness to the Court, we desire squarely to meet the charge of appellant. Accordingly, the record before the Commission has been summarized in topical form and

appended to this brief? It illustrates the completeness of the record. It reveals the background for the Commission's opinion and order. And it brings into bold relief the basis for condemning the 7-cent fare and, in lieu thereof, ordering a 6-cent fare established. Of particular importance in the latter respect is the material included in the appendix under the headings, Trend of Revenue, Effect of Fare Increases, Universal Transfer, Trends of Operating Expenses, Wages, Depreciation Expenses, Depreciation Reserve, Disposition of Depreciation Accruals, Trends of Earnings, Effect of Fare Changes, Earnings, Future Outlook, Relation of Fare to Service, Comparison with Other Localities, Fare Changes, One-Man Car Operation, Wages and Working Conditions, Traffic and Loading, Performance of Schedules, Quality of Service, Relation Between Service and Fares, Design of Schedules, and on details of operating expenses under various headings.

Appellant, as a matter of tactics, has quoted certain passages from appellees' brief in the court below and has high-lighted disconnected statements in an effort to persuade this Court that no regard has been had for substantive due process. Its challenge, we submit, is adequately and conclusively met if this Court is presented with the full statement of our discussion before the State court respecting the 7- and 6-cent fares. In order that this Court may not be misguided in the processes by which the Commission utilized and applied facts of record, we quote from appellees' brief in the lower court: (pp. 16-20, inclusive.)

"With respect to the basis of the Commission's revenue estimates, the Court is respectfully referred

MARKET STREET RAILWAY COMPANY TREND OF REVENUE PASSENGERS 1936 TO 1942 AND 1943. ESTIMATED AT 7-CENT FARE AND 6-CENT FARE



* The company's monthly reports from 1938 to April 1943 are a part of the record by stipulation (Transcript, page 19)

HISTORY OF FARES

1936 5¢ fare, free transfer

1937 { January 1 to July 5: 5¢ fare, free transfer.
 { July 6 to December 31: 5¢ fare, 2¢ transfer.

1938 { January 1 to May 28: 5¢ fare, 2¢ transfer.
 { May 29 to December 31: 7¢ or 4 tokens for 25¢, free transfer.

to the diagram opposite this page, on which the total revenue passengers of petitioner are plotted from 1936 to 1942, inclusive, showing both the trend of traffic and the actual figures for each of those years. The actual figure for the 12-month period ending April 30, 1943, is also shown. In the lower curve on the diagram the full-fare passengers are shown for the period 1938 to April 30, 1943. All figures are taken from the record, Exhibit 10 Chart 3-2 (following page 17)" [R. 194-A] "and Table 3-2 (following page 15) [R. 190] "and from monthly reports of petitioner which are in the record by stipulation. The diagram also shows in dotted lines the estimated full-fare passengers for the entire year 1943 with, respectively, the 7-cent fare and the 6-cent fare in effect. These dotted lines represent the estimates made by the Commission.

"The Commission concluded that with the 7-cent fare in effect for the full year 1943 approximately 120,000,000 full-fare passengers would make use of petitioner's lines. This number of passengers would produce $(120,000,000 \times 7 \text{ cents})$ \$8,400,000 gross revenue. The Commission concluded that the total gross revenues in 1943, with the 7-cent fare, would be \$8,700,000. The additional \$300,000 would be contributed, in the same proportions as in the past, by revenues other than from the 7-cent fare. Such other fares were not changed by the Commission. *Full-fare passengers have consistently produced more than 95 per cent of the total operating revenue in recent years.*

"In reaching this conclusion the Commission obviously made a conservative and reasonable estimate. The upward trend of full-fare passengers is clearly shown when the years 1941 and 1942 are compared and that upward trend is even sharper for the 12-

month period ended April 30, 1943. Based on this evidence in the record, the Commission could properly and reasonably assume that this trend would hold throughout the year 1943 and for a reasonable period in the immediate future. The Commission, however, took a more conservative attitude and concluded that the number of full-fare passengers for the year 1943 would amount to only 120,000,000. This estimate of full-fare passengers is the Commission's own estimate and cannot therefore appear in the record, and neither is reference made to that particular figure in the decision. The Commission's decision made reference to dollar revenue, expense and profit. The number of passengers was converted into gross revenue. The foregoing shows the evidence on which the Commission based its estimate of \$8,700,000 operating revenue under the existing 7-cent fare.

"Petitioner next alleges that 'evidence is entirely absent concerning the expense of handling that traffic.' Petitioner's operating expense is a matter of the most detailed record in this proceeding by separate years (and for a portion of that period by separate months) and by individual operating accounts for the period 1922 to 1942, inclusive, (Exhibit 10, pp. 20 to 37;" [R. 197 to 240] "also Exhibits 1 and 2" [R. 142, 151]. "For the last full year (1942) in the record, petitioner's *actual* operating expenses, including depreciation and taxes, were \$6,504,627. The Commission's allowance of \$7,940,000 for operating expenses in 1943 was estimated in a manner similar to its estimate of traffic and of revenue as above referred to.

"The Commission's conclusion as to the number of full-fare passengers that would make use of petitioner's service under a 6-cent fare is shown at point

B of the preceding diagram and represents 136,700,000 passengers. This number, at a 6-cent fare, will produce an operating revenue of approximately \$8,200,000. The Commission's conclusion was that with a 6-cent fare the total annual operating revenue of petitioner would amount to \$8,500,000, a difference of \$300,000, which is again accounted for by revenues from other than 6-cent fares. The difference between the estimated number of passengers under the 6-cent fare and the number estimated under the 7-cent fare, it will be noted, is due to the stimulation of traffic resulting from the decrease in fare and is comparable to the loss of passengers in 1937, 1938 and 1939 when the fares were progressively increased from 5 cents to 7 cents.

"The Commission in its decision (Appx. to Petition, p. 44)" [R. 91] "sets forth the estimated operating results on which the 6-cent fare is based, as follows:

"We expect the company to make every reasonable effort to improve the present unsatisfactory and inadequate service and to put all available equipment into operation. With a six-cent fare it is our expectation, based on the evidence available from the record and from the company's past and present experience, that an annual revenue of approximately \$8,500,000 will be produced. Operating expenses, including taxes and \$750,000 for depreciation, we estimate, will amount to about \$8,000,000, leaving a net operating income of about \$500,000, corresponding to an approximate rate of return of 6% on the base figure of \$7,950,000. Such a return would be more than adequate under existing conditions.'

"With reference to petitioner's allegation that 'evidence is entirely absent' concerning an estimate of

expense of handling the traffic under a 6-cent fare, the record contains the exact expense figures for all the years 1922 to 1942, inclusive, and also for the 12-month period ended April 30, 1943. (Exhibit 10, Table 8-1, following page 43.)" [R. 255] "Actual total operating expenses, including taxes and depreciation for 1942, were \$6,504,627. For the full year 1943 the Commission, on the basis of the record, concluded that, under the existing 7-cent fare with approximately the same amount of service rendered, an allowance of \$7,940,000 for operating expenses would be sufficient. The provision for increased expenses over and above the actual expenses for 1942 amounts approximately to \$1,440,000. The Commission made an allowance for operating expenses of \$8,000,000 for handling the traffic that might be expected under the 6-cent fare, an increase in operating expenses of \$1,500,000, in round numbers, over and above the actual figure for 1942.

"The Commission made no finespun estimates. They were not necessary. It concerned itself solely with two questions: first, how much traffic (how many car riders and bus riders) would there be; second, what would it cost to haul such traffic? If the number of riders is known or estimated, the record provides an almost exact basis for determining the revenue that will be produced by such riders (more than 95 per cent of petitioner's revenue has been produced by full-fare passengers). The number of riders in all of the years of the recent past is definitely known and shown in the record under the 5-cent fare, under the increases granted by the Commission in 1937 and 1938, and under the straight 7-cent fare since 1939. The Commission encountered no difficulty in reaching a reasonable conclusion of what might be expected in

the way of traffic and revenue, in round numbers, during an immediate future 12-month period. The cost of handling the existing traffic in the immediate and in the more distant past is fully shown in the voluminous record. The Commission made a substantial and liberal allowance for increased expenses. It did not assume that the certain increase in traffic under a lowered fare could be handled for the same expense as was incurred in the year 1942."

Having demonstrated conclusively that the record is adequate in every respect and that the Commission assiduously adhered to that record in its determinations, the charge that the ordered reduction was made upon "speculation and conjecture" is obviously erroneous. Perhaps in its earnest endeavor to have the sound decision of the lower court overturned, appellant has become overzealous in its comments. It follows that the reference to *West Ohio Gas Co. v. Commission* (No. 1), 294 U.S. 63, 68 (Appellant's Brief, p. 44) becomes meaningless and in need of no comment in that the proposition for which it is cited simply does not exist, at least on this record.

The appellant feigns surprise and alarm at the method by which the Commission measured operating expenses that would result from the handling of added traffic under the 6-cent fare. The record support for its deliberation is hereinafter discussed. Suffice it to say that the allowance made was liberal. (See page 31 of this brief.) Appellant would urge upon the Commission a theory whereby operating expense is said to vary directly with the increase in traffic. This theory is in sharp conflict with the record, with any sound theory of rate-making known to

appellees, and most certainly was not used in arriving at the ordered reduction.

It should be called to the attention of this Court that the same hue and cry here presented was raised in the court below; in fact, the matter was discussed in the course of oral argument and on brief, where we said:

"At the oral argument, counsel for petitioner requested that respondent explain how the figure of \$7,940,000, operating expenses of petitioner for the year 1943, was secured or computed. This figure appears in the Commission's first decision (Appendix to Petition, p. 39)" [R. 87] "and also in the opinion denying rehearing. (Appendix to Petition, p. 115)." [R. 137] "As has been explained above, this figure was obtained by using prior operating expense figures of the petitioner, which figures were in evidence. Such figure of \$7,940,000 is based upon a 7-cent fare (Appendix to Petition, p. 39)" [R. 87] "and represents a permissible estimate which the Commission could legally make from the facts in evidence. Obviously, the Commission could not know the operating results of the petitioner at a time when those results had not materialized. Members of a public utilities commission are permitted to use their knowledge of human experience in ordinary matters of life just as a trial court judge is permitted to do when trying a case without a jury, or as a juror is permitted to do."

"The figure of \$7,940,000 (estimated operating expenses for the year 1943) referred to above, included \$590,000 for taxes and \$750,000 for depreciation expense. By referring to the table in the Commission's decision which shows operating results commencing with the year 1922 and ending with the 12-month period ended April 30, 1943 (Appendix to Petition, p.

34),” [R. 83] “it will be noted that for the 12-month period ended April 30, 1943, the operating expenses, exclusive of taxes and depreciation, amounted to \$6,007,028. Taxes for that period amounted to \$122,500 and depreciation for the same period \$500,000, making the total operating expense for that period amount to \$6,929,528. By allowing for this particular 12-month period a figure of \$590,000 for taxes and a figure of \$750,000 for depreciation, the total operating expenses for that period would amount to \$7,347,028. It will be noted by the use of these two latter figures the tax allowance is increased approximately \$170,000 and the depreciation charge \$250,000. *Yet, with these generous allowances, still, the estimated operating expenses of petitioner for this particular 12-month period would be approximately \$650,000 less than the annual operating expenses of \$8,000,000 allowed to petitioner by the Commission under the 6-cent fare.*”

We submit that the foregoing discussion clearly disposes of any contention raised by appellant that only \$60,000 was allowed for additional expense for prospective increase in patronage. Patronage increase and, in fact, other unforeseen and fortuitous circumstances are adequately cared for in the amount represented by the difference between \$7,347,028 and \$8,000,000, or \$652,972.

We have taken the trouble to detail many of the mechanics and formulae by which the ordered reduction was arrived at, even at the expense of an exhausted patience. Appellant well knew from the trial of these matters, from the rehearing stage, and from its unsuccessful effort in the lower court the extent to which these calculations were justified by the record. And yet it has seen fit again to

raise a matter which at this stage is no more than time-consuming. In the final analysis, these calculations are but a phase of the "pragmatic adjustments" left within the province of the Commission. (*Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586. See also *Knoxville v. Knoxville Water Company*, 212 U.S. 1; *San Joaquin L. & P. Corp. v. Railroad Commission*, 175 Cal. 74, 76.)

(c) Consideration was given to allocation of operations as between San Francisco and suburban services.

Appellant has seen fit to raise much ado about allocation as between San Francisco and suburban services. It states that no consideration could be given to apportionment of traffic, revenue, and expense because "There is no evidence in the record * * * not even an expressed expectation * * *" on these matters. Again let us look at the record!

To characterize the suburban property—known as the San Mateo line—as an almost infinitesimal portion of the total becomes somewhat of an understatement when the total operations are viewed. (See R. 166-A.) The fact is that appellant "operates one car line south into San Mateo County (Line No. 40)." (R. 178.) And on this line appellant operates about 4 per cent of its equipment on which less than 5 per cent of its revenue passengers and total passengers are carried, and who account for less than 5 per cent of its total electric revenue (Table 2-I, R. 179). No adjustment in these suburban fares was ordered by the Commission. Nor did appellant at any time represent to the Commission that it needed an increase in such fares. Complaint at this late date seems hardly appropriate.

(d) The charge that "expectancy" rather than "facts of record" formed the foundation of the Commission's order is lacking in fact and is contradicted by the record.

The appellant charges that future revenue, future expense and future calculations were "unsupported expectations," "made without evidence." (Appellant's Brief, p. 45.) Without desiring to be unduly repetitious, the Court's attention is respectfully called to the detailed financial data contained in Exhibit 10, setting forth gross maintenance expense, gross operating expense, total operating expense, operating taxes, depreciation, operating income and total operating revenues, by years, from 1922 to and including 1942. In addition, the same data are of record for the 12 months ending April, 1943. (R. 83.) Also, the company's monthly reports from 1938 to April 1943 are a part of the record. (R. 378, 639-640.)

The processes utilized in developing each of the factors charged with being mere "expectations" have been minutely described, and the use to which Exhibit 10 and other reports were put has been detailed also. (See pages 10 to 15, inclusive, of this brief.) From these detailed records, outlining operating and financial results for many years, the Commission trended for the future. All doubts were obviously resolved in favor of the appellant as is evidenced by the liberality accorded it in operating expense allowance. If undue liberality toward the complaining party invades a constitutional guarantee or in any way impinges on the future successes of appellant, we stand before this Court as an admitted law violator, ready to have judgment pronounced.

- (e) The Commission did not go beyond the use of expert judgment predicated upon facts of record in ordering a 6-cent fare.

According to appellant, the Commission substituted "expert knowledge" for "expert judgment", then and thereafter arriving at its conclusions. Parenthetically speaking, so utterly ridiculous and wrong was the Commission that its order received the unanimous approval of the court below. And despite the fact that the lower court used language distasteful to appellant in sustaining the Commission's order (R. 620 and Appellant's Brief, p. 46), its (the appellant's) categorical statement that the position of the Commission and the California court "is contrary to the most fundamental concepts of procedural due process of law" does not, *ipso facto*, overturn the appealed from order and judgment. The Commission *did* "act upon evidence and not arbitrarily." This followed "due notice and an opportunity to be heard. * * *." The procedure *was* consistent with the essentials of a fair trial. (*Railroad Commission v. Pacific Gas & Electric Co.*, 302 U.S. 388, 392, 393.) The presumption resting in favor of the order, we submit, requires something more than mere assertion to overturn it.

If *Ohio Bell Tel. Co. v. Commission*, 301 U.S. 292, is cited on the theory that the rule of law therein contained is applicable to the instant proceeding, we vigorously differ with the appellant. There, "Without warning or even the hint of warning that the case would be considered or determined upon any other basis than the evidence submitted, the Commission cut down the values for the years after the date certain upon the strength of informa-

tion secretly collected and never yet disclosed." (p. 300.) These star chamber tactics were used as the basis for an ordered refund. Under such circumstances obviously no fair hearing was accorded. And the order amounted to condemnation without trial as pointed out by this Court. (p. 300.) Under such circumstances "judicial notice" could not be successfully seized upon as the vehicle to cure the defect.

But where, as here, the Commission confined itself to ordering a 6-cent fare established upon concrete and indisputable evidence, it most certainly confined itself to calculations tempered with reasonable, fair and expert judgment well within the rule of the *Hope* case, *supra*, and not, as argued for, in conflict with the *Ohio Bell Telephone* case just discussed.

In no sense, as alleged, did the Commission at any time cite *Clark's Ferry Co. v. Commission*, 291 U.S. 227, for the proposition that, "without evidence, it could 'forecast into the future what the traffic was going to be.'" (Appellant's Brief, p. 49.) Experience has dictated that economic conditions are constantly changing, with the result that every rate order is in a practical sense experimental. Here, the Commission's expert judgment must be invoked in light of the record before it. It seems fairly obvious that regulatory agencies might frequently err in judgment due to changing economic conditions. Until the 6-cent fare had been tried and the subsequent facts disproved the Commission's judgment, appellant is hardly in a position to criticize or, so to speak, put words in the Commission's mouth. The opinion of the Commission contains a discussion appropriate at this point:

"The Commission, according to counsel, can make arithmetical computations, but it cannot reach a deduction or conclusion that earnings or traffic or expenses for the entire year will be proportionate or disproportionate to the experience of a substantial portion of such year, or will be greater or smaller than in the preceding year, even though there be evidence of definite trends and extended actual experience. We cannot accept the company's limitations thus set upon the functions and duties of the Commission in a proceeding of this nature. In our consideration of testimony we are not confined to the operation of an adding or computing machine, nor does the law or common sense prevent our exercise of reasonable judgment on the basis of an entire and voluminous record." (R. 127.)

"The Commission has based its conclusions on the operating and financial results of the fare increases and not on mere theory. The record shows the company's actual experience and we can see no reason why we should substitute mere theory when we have before us the uncontradicted facts." (R. 130.)

In brief, the Commission refrained from doing in this case that which appellant specifically charges it with having done; viz., ordering the 6-cent fare established on the basis of off record speculation; it went no further than to make permissible and lawful use of expert judgment derived from uncontradicted facts.

III.

**THE ORDER IS NOT BASED ON MATTERS OUTSIDE
THE RECORD.**

Appellant, in unequivocal terms, charges that the Commission based its order on evidence outside the record involving operations after May, 1943. (Appellant's Brief, p. 52.) It attempts to glean support for its position by quoting excerpts from our brief in the court below. We think it only fair that this Court be presented with the entire statement in our brief, being fully convinced that it refutes *in toto* the accusation of the appellant.

Preliminarily, however, we admit that perhaps a "technical irregularity" resulted in that, for illustrative purposes, January to August, 1943, revenues and expenses were compared with like data for the previous year. We do not see how appellant can seriously urge that such a comment, representing no more than an isolated comparison, thereby constitutes reversible error. If this be the case, opinion writers henceforth will have to shoulder an almost impossible burden. The isolated description, adjective, illustration, or comma may prove their undoing.

Even conceding the existence of an irregularity, this Court has little or no concern therewith. Its concern is whether the action of the Commission in the totality of its consequences avoids confiscation of appellant's properties. If this be achieved with appropriate regard for the safeguards of due process of law—and such achievement, we submit, has been obtained in the instant case—"there is no denial of due process, though the proceeding is shot through with irregularity or error." (*Railroad Commission v. Pacific Gas and Electric Company*, 302 U.S. 388,

The complete statement in our brief of record in the lower court (pp. 20-21) is as follows:

"* * * In the decision of the Commission (Appendix to Petition, p. 33)" [R. 14, 82] "reference was made to a figure of \$8,321,000 as representing operating revenues for the 12-month period ended May 31, 1943. This figure appears at page 11 of Exhibit 10." [R. 182] "It is true that said decision (Appendix to Petition, p. 39)" [R. 14, 87] "referred to a figure of \$5,689,775 as representing the operating revenues of the petitioner for the period from January to August, inclusive, of 1943, and compared that figure with the figure of \$4,737,856 representing operating revenues of the petitioner for the same period in 1942. Respondent frankly admits that the figure of \$5,689,775 was taken from petitioner's monthly reports filed with respondent pursuant to the Commission's General Order No. 65. However, the respondent does not admit that this figure was used for any purpose other than by way of illustration because, as has been shown above, the 6-cent fare was permissibly based upon the operating figures of the petitioner that were included in the record. While respondent does not concede that the reference to these monthly reports of the petitioner to and including August of 1943 constituted error, nevertheless, should it be held otherwise, it is very obvious that such irregularity or error was harmless and immaterial and that such a situation comes squarely within the rule laid down by the United States Supreme Court in the case of *Railroad Commission v. Pacific Gas and Electric Company*, 302 U.S. 388, 394, 395. If, as has been conclusively shown above, the record supports the reasonableness of the 6-cent fare, it is perfectly immaterial whether or not the Commission may have used some additional figures or may have proceeded upon some erroneous theory so long as the result was correct. This is squarely

We heartily agree with appellant that essential requisites of a valid rate order are procedural and substantive due process of law. In that appropriate regard has been obviously had for these constitutional safeguards and in that we have demonstrated that the Commission's calculations, deliberations and conclusions were from facts of record, no good purpose would be served by debating further the cases discussed and cited by appellant at pages 53 to 55, inclusive, of its brief. Suffice it to say that appellees well understand the holding of the *Pacific Gas & Electric Company* case; that no quarrel is had with the principles for which *Interstate Commerce Commission v. Louisville & Nashville*, 227 U.S. 88, and *Carter v. Kubler*, 320 U.S. 243, and *West Ohio Gas v. Commission*, 294 U.S. 63, are cited. We most vigorously deny that the Commission has ever claimed a power to consider matters forming no part of the record (Appellant's Brief, p. 55), and to determine a rate order thereon. And we further challenge as erroneous the interpretation placed by appellant upon the opinion and conclusion reached by the California Supreme Court.

IV.

VALUE OF THE SERVICE WAS PROPERLY CONSIDERED BY THE COMMISSION.

To appellant's claim that there is no evidence justifying a rate reduction on the basis of the value of its service (Appellant's Brief, p. 57), we take exception. In this respect the Commission did not limit itself to an examination of such matters as rate base and rate of return.

Instead it recognized its duty to the rate payers and, hence, inquired into the value or worth of appellant's service, even though this may have proved embarrassing to appellant.

In substance, it is appellees' position that in disposing of the rate aspects of a given proceeding, service may not be ignored. Instead, rate and service factors are inseparable elements.

Appellant seems to grasp some significance from the fact that only one witness testified at length on the value of service principles. Be that as it may, the witness referred to was the Commission's Assistant Director of Transportation and Chief Engineer, in charge of all the technical aspects of the case. Moreover, we gather from appellant's brief, p. 57, an implication that only a comment or two was made by the witness which was later seized upon by the Commission to sustain its rate order. Such, we submit, is unfair and far from being true.

Among the points made by this chief engineering witness were that

1. We cannot entirely close our eyes to the value of the service.
2. There is no question but that the passengers are getting less for their money today than they were when they got better transportation.
3. The public is willing to pay if you will give them some service.
4. The public is getting less for their money—"much less than in normal times, and I think we have to think of that."

5. The service is worse now than it was during the 5-cent era prior to the war emergency.

6. The cost of the service that the public is to pay, must pay, should have some relation to the quality of service that is rendered.

7. The value of the service should be in keeping with the rates.

These critical points were made in open hearing and subject to all the rigors of cross-examination by appellant. (R. 75-76.) Yet at this stage of the proceeding a plea of "no evidence" is made. Phrasing comment in the most kindly way possible, appellant's contention is utterly ridiculous.

Regardless of service to war industries and to the patrons of the San Mateo segment, a small and almost independent line previously discussed in this brief, *there was substantial evidence, as we have shown, on the relationship between rates and service and the interdependence of these two important factors.* The fact that rate-making elements are not equated by the witness in monetary terms is obviously immaterial. In no proceeding to our knowledge involving the lawfulness and propriety of a rate adjustment has any witness ever attempted to break down the two or more elements that may have been involved for the purpose of charging them with a dollars and cents value. The proceeding here under review represents no departure from the past.

Appellant has sought to detour the Court away from the basic and fundamental problem through a rebuttal of cases utilized by appellees and the court below, such

discussion being cited for the proposition that "A confiscatory rate cannot be sustained on the theory that it is an adequate price for the service independently valued." (Appellant's Brief, p. 59.) The quoted statement is obviously made to mislead this Court into the belief that the value of service principle controlled the Commission's order.

Firstly, *we wish to categorically deny such a charge.* We submit that the record and the details of the Commission's methodology of approach to the 6-cent fare, hereinbefore discussed, refute in every sense of the word such an open untruth. Secondly, we desire to be the first to agree with appellant on the abstract principle of public utility rate-making that "A confiscatory rate cannot be sustained on the theory that it is an adequate price for the service independently valued."

In that the principle as used by appellant has no application to this proceeding, no purpose would be served by discussing the cases referred to by appellant. It should be said, however, that appellant has shown poor taste in charging the lower court with misuse of authorities. We submit that the lower court was entirely correct when it said:

"• • • The findings of inadequacy in the maintenance and service are supported by the evidence. The commission is empowered under the statute in fixing the fare to take into consideration the quality of the facilities and service. The commission decided that even in war time improvement was possible, and that the value of the improved service would be no more than six cents. The problem of the value of the service, and the correctness of the commission's

decision on the consumer interest, do not involve constitutional questions, so long as otherwise the investor or company interest has received adequate consideration by the commission. When the company interest has received constitutional protection, the findings of the commission on the consumer interest become final in the proceeding. The question involving that interest then has been answered by the commission correctly pursuant to the statute and the authorities to the effect that the reasonableness of rates should not be considered apart from the adequacy of the service, and that the public should not be charged more than the service is reasonably worth. The statute is a legislative recognition of the public's right to demand that consideration be given to the value of the service. (Covington etc. Turnpike Co. v. Sanford, 164 U.S. 578, 596; Spring Valley Water Works v. San Francisco, 192 Fed. 137; see Article, Value of the Service as a Factor in Rate-Making, 32 Har. Law Rev. 516.)" (R. 622.)

V.

THE ORDER IS NEITHER INVALID NOR CONFISCATORY.

With due deference to the *opinion* of appellant that its rate base may have reached extravagant proportions (Appellant's Brief, p. 65), *the fact of record* is that the fair value of its property for rate-making purposes is \$7,950,000. And, contrary to appellant's position, *market or commercial value can be a test!*

We are not for the first time urging a new and novel principle; it was considered and disposed of by the court below. (See pages 5 to 10 of this brief. If there is

anything improper in the use of the aforementioned sum, it rests in the fact that the properties were finally disposed of to the City and County of San Francisco for \$450,000 less than the Commission allowed to appellant as a rate base. Such a circumstance would hardly be error of which this appellant could complain.

Adverting now to the rather elaborate calculations developed in appellant's brief, pages 66 and 67, we see in the comments of Mr. Chief Justices Hughes in the *Lindheimer* case, *supra*, a most appropriate and succinct response: (p. 175)

"The case has long been pending and should be brought to an end. The Company has had abundant opportunity to establish its contentions. In seeking to do so, the Company has submitted elaborate estimates and computations, but these have overshot the mark. Proving too much, they fail of the intended effect. It is not the function of the court to attempt to construct out of this voluminous record independent calculations to invalidate the challenged rates. It is enough that the rates have been established by competent authority and that their invalidity has not been satisfactorily proved."

VI.

DEPRECIATION.

We would be remiss in our policy of "full disclosure" if we failed to call this Court's attention to a circumstance which illustrates the hopelessly confused position of appellant with regard to any satisfactory depreciation reserve. Reference is made to Exhibit 10 (R. 165) and

particularly Chapter VII thereof (R. 248-252), inclusive. There it will be noted that over the period from April 1, 1921 to December 31, 1942, appellant accrued depreciation *for tax purposes* in the total amount of \$26,834,000 as compared with appropriations to the depreciation reserve of only \$9,902,000, a difference of \$16,932,000. (R. 251.) As is stated in Chapter VII of Exhibit 10, the depreciation reserve set up by appellant bears little, if any, relationship to the accrued depreciation that now exists in its operative properties.

We respectfully submit that the unanimous judgment of the Supreme Court of the State of California, affirming the order of the Railroad Commission, should be affirmed, or the appeal herein dismissed.

Dated, San Francisco, California,

February 14, 1945.

Respectfully submitted,

EVERETT C. McKEAGE,

RODERICK B. CASSIDY,

WYMAN C. KNAPP,

FRANK B. AUSTIN,

JOHN M. GREGORY,

Counsel for Appellees.

(Appendix Follows.)

Appendix

CASE No. 4680

**INVESTIGATION ON THE COMMISSION'S OWN MOTION
INTO THE RESULTS OF OPERATION OF
MARKET STREET RAILWAY COMPANY**

**SUMMARY OF TRANSCRIPT AND EXHIBITS BEFORE THE
RAILROAD COMMISSION**

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Market Street bottleneck	xxviii
One-man car operation	xxix
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GENERAL

Witness	Record Page	
Donovan	375 and Ex. 2 (R. 151)	Comparative balance sheet, profit and loss analysis, and income statement of Market Street Railway for the years 1938-1942.
Mors	Ex. 10 (R. 165)	As of December 31, 1942, Standard Gas and Electric Company's stock holdings represented 39.7 per cent of the total voting power; the next highest holdings represented 2.1 per cent (Table 1-1, R. 170).
Kahn	565	The local management and local directorate have full control over Market Street's operations. Standard Gas and Electric exercises no active voice.
Hunter	456	Observations and recommendations are based on wartime conditions. Under normal conditions the approach to the problem would be quite different.
Hunter	371	While the Commission has no jurisdiction over S. F. Municipal Railway, any study of operations of Market Street Railway must, of necessity, involve a study of the Municipal system and, to a smaller extent, the California Cable.

REVENUE

Trend of Revenue

Mors	Ex. 10 (R. 165)	Market Street's total operating revenue declined almost continuously from a maximum of \$9,903,000 in 1925 to a minimum of approximately \$6,060,000 in 1940 and 1941. It increased to \$7,575,000 in 1942 and \$8,321,000 for the 12 months ended May 31, 1943. Passenger revenue makes up more than 99 per cent of the total (page 11, R. 182, and Table 3-1, R. 184).
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<u>Witness</u>	<u>Record Page</u>	
Mors	Ex. 10 (R. 165)	Charts 8-1, R. 254-A, and 8-2, R. 256-A, show the trend and disposition of operating revenue of Market Street Railway.

Effect of Fare Increases

Hunter	373 and Ex. 1 (R. 142)	Fare passengers and passenger revenues of Market Street and Municipal Railways, 1933-1943 (graphs, R. 148-50). During the period 1933-1936 (5-cent fares), Market Street carried 71 per cent and Municipal 29 per cent of the combined traffic, and the revenue followed approximately the same division; during the three years 1939-1941 (Market Street fare 7 cents, Municipal fare 5 cents), Market street carried approximately 52 per cent of the combined fare passengers, and received about 60 per cent of the passenger revenue.
Mors	440	The introduction of the 2-cent transfer charge (in 1937) did not have a pronounced effect upon operating revenue, but the change to a 7-cent fare with 4 tokens for 25 cents in May, 1938, resulted in an immediate decrease in revenue (Chart 8-2 of Ex. 10, R. 256-A).
Mors	410	When tokens represented a saving (4 for 25 cents as compared with 7 cents cash fare) about 70 per cent of passengers used tokens; now, with no saving, only about 20 per cent of fares are tokens.
Kahn	556	Municipal Railway did not absorb all passengers Market Street lost after fare was increased; transfer occurred only on competitive lines.

Universal Transfer

Cahill	426	Adoption of universal transfer would cost Market Street and Municipal together about \$225,000 per year in revenue.
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<u>Witness</u>	<u>Record Page</u>	
Cahill	431	Cahill's opinion is that under present conditions a universal transfer would not bring much additional traffic.
Miscellaneous		
Mors	Ex. 10, (R. 165)	In 1942 Market Street's average fare per revenue passenger was 6.75 cents and the ratio of transfer passengers to revenue passengers was 39.8 per cent (Table 3-2, R. 190).
Hunter	483	Possibility of loss of revenue in one-man car operation under crowded conditions through inability of operator to prevent people entering rear doors was admitted.
Kahn	520	The Municipal Railway's revenue per car hour exceeded that of Market Street in each of the years 1934 to 1937 when the fare was 5 cents on both systems. Mr. Kahn attributes this to the fact that Municipal serves the more lucrative territory.
Kahn	523	Market Street has lost patronage due to extension of the Municipal Railway, as well as due to its own fare increases (See Exhibit 21, R. 306).
Kahn	535	After the restrictions on gasoline and rubber are removed Market Street expects its patronage to decline to pre-war levels.

OPERATING EXPENSES

Trends of Operating Expenses

Mors	412	"The charts (charts 4-1 and 4-2 of Ex. 10, R. 200-A, 202-A) show that whereas total operating expenses declined about 35 per cent from 1927 to 1941, maintenance expenses declined more than 50 per cent."
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<u>Witness</u>	<u>Record Page</u>	
Mors	Ex. 10 (R. 165)	Way and structures maintenance expense per car-mile has been relatively constant; however, the expense per mile of track has dropped to less than half of the 1924-1928 level (Table 4-2, R. 204-A).
Mors	435	Market Street's equipment maintenance expense per car-mile has been fairly constant and comparable to Municipal's but considerably lower than Los Angeles Railway's. Market Street has spent relatively more for maintaining the electrical equipment of cars and less for maintaining the cars themselves.
Mors	Ex. 10, 220	Market Street's "conducting transportation" expense per 100 passengers increased from \$1.38 in 1934 to a maximum of \$2.27 in 1940; in 1942 it was \$1.99 and amounted to 55.6 per cent of total operating expense. Wages of platform men comprised 84 per cent of the "conducting transportation" expense in 1942 (Table 4-18, R. 228).
Mors	Ex. 10, 232	General and miscellaneous expenses declined from a peak of \$1,072,000 in 1929 to a low of \$656,000 in 1941. Most of the subsequent increase in 1942 was in injuries and damages accruals.

Wages

Kahn	Ex. 20 (R. 294) and 555, 563	This exhibit sets forth the demands made upon Market Street Railway by the union. Company estimates that the union's demands would cost \$1,250,000 per year in additional operating expense. It has not agreed to the demands, and the question of a wage adjustment is presently before the Regional War Labor Board.
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Record
Page

Witness

Kahn Ex. 20 Principal wage demands on Market Street Rail-
(R. 294) way, now before the Regional War Labor Board:

- | 1. | <u>Hourly Wage Rates</u> | <u>Present Top Rate</u> | <u>Union Demand</u> |
|----|--|-------------------------|---------------------|
| | Street car operators | | |
| | (2-man) | 83¢ | \$1.00 |
| | Bus and car operators | | |
| | (1-man) | 90¢ | \$1.10 |
| | Increases demanded also in other classes of labor | | |
| 2. | Guaranteed 48-hour week with time-and-a-half for all over 40 hours. The demands also involve working conditions. | | |

TAXES.

- Mors Ex. 10, Market Street's operating taxes as charged ranged
236 between \$402,000 and \$432,000 over the last six years. Ad valorem taxes made up 47 per cent of the total in 1942, and unemployment insurance and social security taxes 34 per cent (Table 5-1, R. 238).
- Mors 435 Market Street has not paid any federal income tax for a number of years.
- Kahn 521-22 Market Street is setting up income tax accruals in 1943 and these are not reflected in the comparative income statement figures for 1943 in Exhibit 1, R. 142.
- Kahn 561 If Market Street leased its properties to the city for consolidated operation, the rentals would be classed as income and taxed accordingly. This would limit the return to such an extent as to make the plan impracticable.
- Hunter 372 The Municipal Railway system pays no taxes.

DEPRECIATION

Depreciation Expense

<u>Witness</u>	<u>Record Page</u>	
Mors	438	For a number of years an annual appropriation of \$500,000 for depreciation has been credited to the depreciation reserve and charged to profit and loss.
Mors	438	An approximate calculation based upon historical cost shows the annual straight line depreciation expense requirement to be roughly \$780,000.
Mors	438	In May, 1943, the company increased its monthly depreciation charge to provide an annual accrual of \$750,000 instead of \$500,000.
Mors	438	If adequate provision is not made or cannot be made for currently accruing depreciation, the inevitable result is that some of the capital investment is consumed.

Depreciation Reserve

Mors	438	The depreciation reserve balance of \$1,023,887 at the end of 1942 amounts to less than 3 per cent of road and equipment per books.
Mors	439	No charges were made against the depreciation reserve prior to 1927.
Mors	439	Net charges to the depreciation reserve averaged \$780,000 in the eight years 1935-1942 as against annual appropriation of \$500,000 (See Table 7-1 of Ex. 10, R. 250).
Mors	439	Only about 29 per cent of the retirement of three car lines abandoned during 1942 was charged to the depreciation reserve, the remainder (approximately \$883,000) being charged to profit and loss.

Disposition of Depreciation Accruals

<u>Witness</u>	<u>Record Page</u>	
Mors	Ex. 10 (R. 165)	Total additions and betterments from April 1, 1921, to December 31, 1942, including construction of two new car lines, aggregated \$6,109,000 (while moneys withheld as depreciation accruals aggregated \$9,902,000 in the same period (Tables 6-1 and 7-1, R. 242, 250).

EARNINGS

Trends of Earnings

Hunter	371 and Ex. 1 (R. 142)	Comparative income statements of Market Street Railway and S. F. Municipal Railway, 1932-1942 and first three months of 1943. Lowest passenger revenue of Market Street was in 1940—\$6,015,000; 1942 passenger revenue was approximately \$7,535,000. Operating income ranged from a deficit of \$40,234 in 1940 to \$1,069,914 in 1942.
Donovan	Ex. 2 (R. 151)	Comparative income and profit and loss statements of Market Street Railway—1938 to 1942.
Hunter	370 and Ex. 1 (R. 142)	Comparative income statements of Municipal Railway, 1932-1942, and first 3 months of 1943.
Hunter	372 and Ex. 1 (R. 142)	Combined income statements—Market Street and Municipal Railways “* * * we have merely taken figures appearing in the preceding pages and consolidated them into a combined statement.”
Hunter	464	For the 21-year period 1922-1942 Market Street's net operating income averaged \$878,000 per year.
Mors	Ex. 10 (R. 165)	Chart 8-2, R. 256-A, shows monthly trend of revenues, expenses, and net operating income from January, 1937, to April, 1943, with fare changes and other significant happenings noted.

<u>Witness</u>	<u>Record Page</u>	
Kahn	557	For more than 10 years prior to 1942 Market Street was in desperate financial condition. It became delinquent in its electric power bills to extent of over \$600,000, which debt was not fully liquidated until March or April, 1943.
Mors	440	Operating income for the 12 months ended April 30, 1943, was approximately \$1,250,000.
Hall	481-82	After providing for depreciation at \$500,000 per year the comparative income statement (sixth page of Ex. 2, R. 156) would show an accumulated deficit of \$326,917.66 for the years 1938 to 1942, inclusive.

Effect of Fare Changes

Hunter	377	Commissioner Sachse brought out from Exhibit 1, R. 142, that despite fare increases Market Street's operating income was lower in each of the years 1938 to 1941 than the lowest operating income prior to the fare increases.
Kahn	520	The combination of 2-cent transfer with 5-cent fare, established by the Commission in 1937, put Market Street in worse financial condition than it had been theretofore.
Kahn	538	Kahn contends company would have fared much better in net income in the first six months of 1938 under a 7-cent fare than it did with the 5-cent fare and 2-cent transfer.
Kahn	526	The 7-cent fare enabled Market Street to meet its pressing financial obligations and thereby precluded the possibility of bankruptcy. If the company had continued on a straight 5-cent fare, it would be bankrupt today.

<u>Witness</u>	<u>Record Page</u>
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Kahn	528 and Ex. 22 (R. 311)
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Based upon the assumption that patronage would follow the S. F. Chamber of Commerce business, that revenue per car hour would remain constant at the 1937 level, and that operating expense per car hour would have been the same as was experienced at the higher fares, the exhibit attempts to support the conclusion that the company was much better off in 1939 with the 7-cent fare than it would have been with a 5-cent fare; and that it was worse off in the first half of 1938 with the 2-cent transfer than it would have been had it retained the straight 5-cent fare.

Rossi	416
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It would be possible, under municipal ownership, to operate the unified Market Street-Municipal system at a profit on a 6-cent fare.

**Plan to Place Excess Earnings in Special Fund
for Future Modernization**

Hunter	468-69
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Situation is that though Market Street's service is poor, its earning position is relatively favorable and probably will continue so for the duration and a reasonable period thereafter. Under these conditions it seems fair and desirable that some program should be made now whereby a fund will be created to insure good service when men and materials are again available.

Hunter	Ex. 17, 286
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"Market Street Railway should place in a special fund its gross revenues less the amounts necessary to defray: Operating expenses—exclusive of depreciation, taxes, interest, sinking fund payments, and equipment notes. Withdrawals from the special fund should be subject to the approval of the Commission."

<u>Witness</u>	<u>Record</u> <u>Page</u>
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Hunter 486-87 and Ex. 19, 291	(Statement and Exhibit offered by counsel.) Market Street's Supplemental Bond Indenture of April 1, 1940, provides, in part, that:
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"9. No payment shall be made on indebtedness to Standard Gas and Electric Company (principal or interest) until the bonds are paid in full.

"10. No payments on principal of existing bank loans shall be made, except after meeting bond sinking fund requirements.

"11. Any cash remaining after meeting sinking fund requirements shall be used for capital expenditures and working capital, any amount over such requirements to 'be used as an additional sinking fund for the Bonds and bank loans pro rata to the principal amount of each.' "

Future Outlook

Hunter 469	San Francisco is one of the best cities in the United States with respect to the street transportation business. There is a high riding habit and a short average ride, which go to make a profitable operation.
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Hunter 469	" * * * I feel that the Market Street Railway can look ahead to future operations with prosperity if it surrounds itself with modern equipment, * * * "
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Kahn 558	Present level of income of Market Street and Municipal Railways is temporary; much patronage will be lost as soon as restrictions on gasoline and rubber are lifted.
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Miscellaneous

<u>Witness</u>	<u>Record Page</u>	
Hunter	470	Operating expenses and taxes have first priority in the disposition of operating revenue. This is in the interest of the public and of the operating companies themselves.
Hunter	470	Interest is a part of return, and sinking fund payments and equipment note retirements serve to reduce the outstanding obligations.
Rossi	416	Operating under the 5-cent fare at a profit which now amounts to over a million dollars a year, the Municipal Railway has accumulated a good surplus.
Cahill	548	Under present traffic conditions the Municipal Railway would remain in the black at 6 tokens for a quarter.
Kahn	561	Lease of properties to city (See under Taxes).

INVESTMENT IN ROAD AND EQUIPMENT

Mors	436	Market Street's books showed \$41,769,000 as of December 31, 1942, compared with \$46,851,000 on April 1, 1921. A Railroad Commission historical cost appraisal, brought forward from 1920 by adding book net additions and betterments each year, yields an undepreciated historical cost of \$25,344,000 as of December 31, 1942.
Mors	437	The 1920 appraisal included only operative property.

<u>Witness</u>	<u>Record Page</u>	
Mors	436	The decreases in road and equipment since the 1926 peak have been due principally to the abandonment of certain lines and the retirement of much equipment without its being replaced.
Kahn	558	Motor coaches costing about 1¼ million dollars have been purchased on a deferred payment plan from 1939 to the present.
Rossi	413-14	Company's offer to sell operative properties for \$7,950,000 (See under "Purchase of Market Street Railway by City").

PHYSICAL PROPERTIES

Tracks

Hall	379	Preliminary inspection of Market Street's tracks showed that there is much deferred maintenance on the system. While reasonably safe for moderate operating speeds it is imperative that the deferred maintenance be caught up as soon as men and materials are available.
Hall	380	Track maintenance program described.

Paving

Vensano and Ex. 7 (R. 639)	403	The city's paving report "indicates that the [Market Street Railway's] total obligations for bringing the paving into proper condition would cost \$1,691,162.76." This amount does not include any track reconstruction except the minimum cost of raising the rail to a uniform grade line where that is necessary.
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<u>Index</u>	<u>Record</u> <u>Page</u>	
ensano	406	This deferred paving maintenance has accumulated over many years.
all	392	"* * * broken pavement allows water to get in under the roadbed and would contribute to the soft roadbed in the wintertime."

Equipment

all	382 and Exs. 3, 5 (R. 159, 160)	Inventory of rolling stock as of May 1, 1943. Some 73 electric cars and 12 cable cars were out of service at that time. Most of the electric cars would apparently be usable after a reasonable amount of maintenance.
all	384-85 Ex. 4 (R. 160)	Car repairs, Number of "turn-ins" and causes.
unter	498	Market Street at present has 56 two-man cars in storage which could be put in service after minor repairs, and 14 one-man cars which would need a little work to convert them for two-man operation.
all	498	All buses are in service except those going through the shops for repair and one old bus assigned to Civilian Defense work.
ahill	423-24	Municipal has sought O.D.T.'s approval for purchase of 50 additional motor coaches and trolley coaches but priorities have repeatedly been refused on the grounds that all rolling stock in San Francisco is not being utilized.
all	382	Preliminary investigation indicates considerable deferred maintenance on street cars now in active service.
ahn	396-97	(Preliminary statement as counsel.) "We have no definite program of setting aside anything for maintenance. We think our first obligation is to dis-

WitnessRecord
Page

charge our debts; * * * we feel that we will then be in shape to refinance when the war is over or perhaps sooner so that we can improve our service generally, * * *

Newton

574

Five motor coaches were obtained since Pearl Harbor for conversion of Sacramento Street cable line, three additional coaches for Third Street line, and sixteen coaches leased from the Navy.

Additional Equipment

Kahn

559

Market Street is unable to purchase motor coaches at the present time.

Jenkins

513

Navy has procured 16 buses under Public Law 779 and lease them to Market Street Railway for the Bethlehem Shipyard and Hunter's Point service.

Newton

574

To date 48 street cars have been remodeled with longitudinal seats and no bulkheads to increase capacity.

Jenkins

515

There is an extreme scarcity of passenger-carrying, transit-type equipment. The Navy finds it extremely difficult to procure buses for its own official use.

Jenkins

513

O.D.T. has jurisdiction over bus allotments to the Navy as well as over the release of buses and street cars to transportation agencies. Navy must comply with O.D.T.'s general orders.

Modernization

Hunter

485

Market Street began modernization program with motor coaches (and trolley coaches on one line) several years before Pearl Harbor (See also pages 7 and Chart 2-1 of Exhibit 10, R. 173, 176-A).

Witness	Record Page	
Kahn	558	Market Street converted its Harrison Street line to trolley coach operation in 1935 as an experiment; in 1939 it began large scale conversion of street car lines to motor coach operation. Motor coaches were considered more practicable than trolley coaches for two reasons: (1) somewhat lesser cost, and (2) greater flexibility.
Hunter	486	<p>Quotation from C.R.C. Decision No. 35753 in California Cable Application 24456:</p> <p>"The exercise of foresight by that company [Market Street Railway], in meeting changing conditions and decreased revenues by substituting transportation facilities that are less costly to operate, might also have been followed by applicant herein if it had been interested in effecting the greatest degree of profit commensurate with reasonable service and low fares."</p>
Kahn		Market Street will continue its modernization program after the emergency period in so far as its means permit, but has no cut and dried program since it wants to be able to take advantage of the most advanced equipment. May not be feasible to substitute buses on trunk street car lines.

FARES

Relation of Fares to Service

Hunter	Ex. 17, 279	Service is an important item to consider in justifying a rate structure.
Hunter	467-68	Customers are getting much less for their money today than in normal times. The public is willing to pay if it can get service.

<u>Witness</u>	<u>Record Page</u>	
Hunter	468	The public should not have to pay the same price for poor service as they formerly paid for good service, regardless of the reason for the poor service.
Hunter	492	There are many elements other than service which must be considered in fixing a proper rate.

Comparison with Other Localities

Hunter		The average street car fare throughout the United States is in excess of 8 cents.
Hunter		San Francisco's average length of haul is among the lowest in the country, which would make for a higher fare per mile of travel.

Fare Changes

Mors	Ex. 10, 177	Rate history of Market Street Railway Company.
Kahn	520	Market Street Railway did not ask for the 2-cent transfer charge established by the Commission in 1937. It considered and discarded such a fare. Its application was for a fare of 7 cents with 4 tokens for 25 cents.
Kahn	538	Kahn contends company would have been better off as to net income in the first six months of 1938 under either the 5-cent fare or the 7-cent fare than under the 5-cent fare with 2-cent transfer.

Miscellaneous

Hunter	465	An increase in wages would be reflected in the rates since labor amounts to more than half the operating expenses.
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<u>Witness</u>	<u>Record Page</u>	
Cahill	420	On May 3, 1943, Mr. Cahill wrote Mr. Crowe of O.D.T. stating that the S. F. Public Utilities Commission strongly advocates a uniform 5-cent fare and universal transfer.
Cahill	430	There should be no charge for transfers. They would not be worth as much as one cent.

PURCHASE OF MARKET STREET RAILWAY BY CITY

Rossi	413	The original proposition for city to purchase Market Street Railway was on a lease-purchase plan recommended by the Public Utilities Commission. After hearings the Board of Supervisors decided a revenue bond issue would be more desirable.
Rossi	413-14	"* * * in my opinion, the transportation problem in San Francisco will never be solved until we have a unified system, one fare and one ownership, * * *." Mayor Rossi testified that under municipal operation, with a 7-cent fare, the unified system operations would have yielded a profit of \$4,879,000, compared with an estimated profit of \$2,416,000 (for the 12 months ended June 30, 1943; Cahill testimony, R. 419).
Rossi	415	"I am still of the opinion that the only way to do it would be to devise some plan, self-liquidating plan, where the City would eventually own the property of the Market Street Railway Company."
Cahill and Ex. 8 (R. 163)	432	On September 24, 1942, Market Street Railway offered to sell its operative properties to the city for \$7,950,000 cash.
Cahill and Ex. 9 (R. 164)	433	The offer to sell for \$7,950,000 was repeated March 25, 1943.

<u>Witness</u>	<u>Record</u> <u>Page</u>
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Hunter	Ex. 17, 283	"The service to the city as a whole would be improved if the facilities of the Market Street Railway and Municipal lines were consolidated or at least an operating agreement existed whereby the available facilities of both systems could be used to the best advantage of the city service particularly at this time when there is such an urgent need for transportation service and little available new facilities."
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Hunter	471	"I personally would be favorable to recommending to the Commission that steps be taken to acquire the property of the Market Street Railway, operating property, by the City."
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MANPOWER

General

Kahn	396	(Preliminary statement as counsel.) "Generally speaking our difficulty at this time is not one of equipment, it is one of manpower * * *"
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Kahn	398	"We have cars that are in good operating condition now that we cannot operate because of the manpower shortage."
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Hall	Ex. 11, Table II, 264	In April, 1943, the platform manpower shortage on Market Street was 18 per cent; on Municipal 9 per cent; and on Los Angeles Railway 13 per cent. By June Market Street's shortage had increased to 22 per cent while Municipal's had dropped to 6 per cent.
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Hall	388-89	In March, 1943, overtime paid to platform men averaged 415 hours per day. Men on sick leave averaged 101 per day and men on vacation pay averaged 59. A large majority of platform men
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Witness	Record Page	
Hall	Ex. 11, Table III, 265	worked through their vacations (Table IV of Ex. 11 shows estimated platform requirements for March, 1943, as 1,582 persons, R. 266).
Hunter	500	Market Street sustained a net loss of 13 platform employees in the 14 months ended June, 1943, while Municipal gained 143. The fact that the best earning position may be achieved with some degree of labor shortage may be a contributing factor in the present manpower situation on Market Street Railway.
Newton	568	Manpower situation has improved since June 1. Market Street will make full use of manpower whenever more is available.

Steps Taken to Relieve Manpower Shortage

Kahn	398	Steps taken by Market Street to obtain additional manpower include: (1) hiring of women, principally as conductorettes, but to some extent as car and bus operators and garage labor; (2) advertising for help; and (3) offering rewards to employees for securing new employees.
Newton 567 and Ex. 26 (R. 332)		Summary of company's efforts to relieve the manpower shortage: Newspaper and radio advertising, posters, bonuses to employees attracting new employees, outdoor signs and signs on outside of one car and one coach, hiring of part-time employees.
Hunter Newton	460 567	Market Street spent more than \$8,000 during the past year to attract additional employees; \$7,500 of this was for newspaper advertising (See also company's Ex. 26 (R. 332)).
Hunter	461	Suggests company try to attract and use office workers for part-time platform work.

One-Man Car Operation (See also under Service)

<u>Witness</u>	<u>Record Page</u>	
Hunter	461	If one-man car ordinance could be suspended for the duration, it would permit of putting more cars on the street. Care would have to be exercised in determining which lines are suitable for one-man operation. Ground loaders should be maintained at heavy traffic points (Ex. 17, page 10, R. 285).
Kahn	396	(Preliminary statement as counsel.) Suspension of the one-man car ordinance would relieve Market Street's shortage of platform labor to a great extent.
Holm	462	(Statement as counsel.) Advises Commission that to suspend the one-man car ordinance would require a vote of the people of San Francisco since it is an initiative ordinance. The ordinance was sustained by the U. S. Supreme Court.
Newton	568	Market Street is attempting to have question of one-man car operation for the duration submitted to voters at November election.
Hunter	465	Opinion that permitting one-man operation for the duration would not result in any layoffs.

Wages and Working Conditions

Kahn.	398	(Preliminary statement as counsel.) Wage scales of platform personnel of Market Street Railway.
Hunter	496	One of the main causes of the manpower shortage is the wage situation. Low wages make it difficult to attract new employees.
Hunter	465	Many Market Street employees have left to go to shipyards and other places where pay is high; many would return to the railway company if the

<u>Witness</u>	<u>Record Page</u>	
		pay were comparable. Any increase in wages would be reflected in the rates since labor amounts to more than half the operating expense.
Hunter	462	The general practice is to pay somewhat higher wages for one-man car operation than for two-man operation.
Kahn	503, 569	Market Street cannot work women more than 54 hours per week due to regulations of the State Division of Industrial Welfare, while the Municipal is not so restricted. Women employees generally want to work more than 54 hours per week to get more overtime pay.
Cahill	548	Municipal Railway is not restricted to a 54-hour week for women and many women platform employees work beyond that figure.
Newton	569	Market Street's working conditions are in some ways more favorable than the Municipal Railway's viz.: Union agreement, checkoff, four hours minimum pay for a tripper, pay for waiting time, low-cost medical protection.

Manpower Shortage in Municipal Railway

Cahill	542, 549 and 552	Reduction in Municipal Railway's shortage of platform personnel from 210 in November, 1942, to 80 as of September 15, 1943 (based on 48-hour week), attributed to (1) wage increase of July 1, 1943; (2) intensive newspaper and radio advertising campaign; (3) working conditions; and (4) "freezing" of employees by War Manpower Commission.
Cahill	429	Municipal's platform labor shortage was 110 (10 per cent) as of July 15, 1943, compared with 250 a short time earlier.

<u>Witness</u>	<u>Record Page</u>	
Hunter	500	Less severe manpower situation on Municipal Railway than on Market Street can be accounted for largely by somewhat higher wages, civil service, better working conditions, etc.
Cahill	429	Believes that Municipal could man 30 more street cars by working platform personnel overtime.
Hunter	484	Commission staff has made no investigation of Municipal Railway's ability to man Market Street's idle cars.

SERVICE

Traffic and Loading

Hall	385-86 and Ex. 6 (R. 161)	Traffic checks—spot checks of load and headway characteristics during peak periods. Average peak-hour load factors April 29 and 30, 1943: Inbound, a.m., 1.6; outbound, p.m., 1.7 (Seated load = 1.0).
Hall	Ex. 11 (R. 262)	Frequency of service and loading of street cars (Charts 1 and 2, R. 272-73).
Kahn	504	The afternoon peak is the most critical period from the service standpoint.
Hunter	495	If Market Street's idle cars could be put in operation, it would materially improve the service on heavily loaded lines during peak periods.
Newton	588	Newton thinks peak-hour loads today are not materially different from those five years ago. Staggered hours program has lengthened the peak-load periods.
Kahn	536	Contends that in normal times an increase in traffic would be spread over the day following the established traffic pattern, and that the increase in car-hours would be approximately in the same proportion.

Performance of Schedules

<u>Witness</u>	<u>Record Page</u>	
Hall	389	In March, 1943, there were an average of 16 cars out of service and 69 trips lost, per day. Loss of schedules is due primarily to company's inability to secure sufficient platform men or women to run all of their schedules and hold overtime to a minimum.
Hall	Ex. 11, Table I (R. 272)	Car and coach schedules of Market Street Railway not performed increased from 0.2 per cent in September, 1942, to 10.3 per cent in June, 1943, while for Municipal Railway during the same period the hold-ins never amounted to more than 0.1 per cent. Los Angeles Railway's unfilled schedules amounted to 4.5 per cent in May, 1943.
Hall	Ex. 11 (R. 262)	Comparison of actual performance with operating schedules (Charts 3-6, R. 274-78).
Hunter	464	Many of the Market Street cars operate ahead of schedule, which is contrary to good practice (See also Chart 3 of Ex. 11, R. 274). In many cases there are groups of cars coming together, followed by rather long intervals of no cars.
Newton	573	Market Street operated 95.09 per cent of scheduled runs in August, 1943 (See Exhibit 26, R. 332).

Quality of Service

Hall	391	"Unquestionably more service could be used on some of the lines * * * particularly during the peak period * * * Utmost care should be taken * * * to avoid * * * bunching of equipment * * *"
Hunter	506	The present Market Street service would in normal times be considered unreasonably bad.
Hunter	456-57	Exhibits introduced in the record support the conclusion that the service on Market Street Railway should be improved, even under war-time conditions.

<u>Witness</u>	<u>Record Page</u>	
Hunter	484	Service is difficult to improve at this time because of heavy traffic and the manpower shortage.
Negrin	476	Mrs. Helen Negrin introduced testimony in her own behalf regarding the poor service of Market Street Railway.
Newton	571	Few service complaints by letter received by Market Street so far in 1943 (See Exhibits 27 and 28, R. 339).
Kahn	504	Market Street Railway does not attempt to adhere to a definite standard of service (such as the City of Los Angeles standard of 175 per cent of the seating capacity and a 25-minute stand) but attempts constantly to fit its facilities to best suit the needs of the people.

Relation between Service and Fares

Hunter	Ex. 17 (R. 286)	"The value of the service should be in keeping with the rates."
Hunter	493	Following the fare increases, Market Street's business dropped off and the service was then adjusted to the reduced traffic requirements. Headway is one component of the "value of service."

Service to War Establishments

Newton	582 and Ex. 31 (R. 363)	Summary of Market Street service to shipyards and war industries:
<ol style="list-style-type: none"> 1. Service to Ferry Building for Richmond Shipyard ferry connection. 2. Motor coach service to Hunter's Point. 3. Third Street car line extension to Mariposa Street to serve Bethlehem Steel. 4. Augmentation of No. 22 Fillmore line service for benefit of Bethlehem Steel employees. 		

5. Motor coach contract service to Western Pipe and Steel at South San Francisco.
6. Special motor coach service for the Navy and Army.
7. Other augmentation of service to take care of needs of war industries.

Coordination of all schedules is necessary since a large proportion of war workers use more than one line in getting to or from work.

Newton 584 and
Ex. 32
(R. 364)

Letter of commendation from O.D.T. on Market Street's service to war plants. This letter mentioned O.D.T.'s survey of local transportation, recently completed, which shows an excess of service over demand by Market Street Railway in off-peak hours. Detail of O.D.T.'s recommendations has not yet been disclosed.

Hunter 485

Transportation to shipyards and other war industries should come first. No complaints have come to the Commission from shipyards or war industries regarding Market Street's service.

Jenkins 511

Navy transportation officers have worked closely with Market Street Railway in preparing service to Bethlehem Shipyard and Hunter's Point Drydock, both of which have large employment. Market Street's service to these establishments has been satisfactory. Market Street has been cooperative in reacting to the Navy's suggestions.

Jenkins 512

Service requirements of the Navy will increase greatly in the near future.

Jenkins 514

Possibly better utilization could be made of the Third Street rail line if it were extended closer to the gate at Bethlehem Shipyard.

<u>Witness</u>	<u>Record Page</u>	
Jenkins	516	The Navy is prohibited from establishing its own regular-schedule transportation system for either Navy personnel or civilian workers unless there is no other mode of transportation available. It establishes its own service only as a last resort.
Jenkins	518	The Navy's first step, if service requests are not complied with satisfactorily, is to request action by O.D.T. This has not yet been necessary in San Francisco.
Jenkins	513	The fluctuation in employment at Naval establishments is more closely tied in with service than with fares, and with time in transit rather than with the inconvenience of getting into the vehicle.

Design of Schedules

Hunter	460	The matter of making schedules is one of the most important things in street railway operation.
Hunter	457	Description of scheduling procedure in Market Street Railway.
Newton	586	General procedure of designing schedules in Market Street Railway. Under present conditions more trippers are used than in normal times in order to make use of part-time workers. It is necessary to build all schedules around service to war industries. In designing schedules Market Street attempts to give as good service today as in normal times but it is much more difficult.
Newton	587	In designing schedules today differences in running time at different times of day are taken into account. Basic data for schedule design are from traffic checks; conductors' checks are not altogether reliable.

Supervision

<u>Witness</u>	<u>Record Page</u>	
Hunter	459	The complicated character of Market Street's operations requires a relatively large number of field inspectors. Salaries of Market Street's inspectors are low in comparison with those of the Municipal Railway, Key System, and Los Angeles Railway.
Hall	454	Closer supervision on the Market Street lines should improve the service.
Hunter	459	Market Street's service could be bettered by an improvement in the field inspection.
Hunter	Ex. 17 (R. 285)	"Market Street Railway should provide better service through improved field supervision, so that when cars or buses get off schedule and operate in close proximity with resulting long intervals between units, some of them should be turned back even at the expense of discommoding some passengers in the interest of better over-all service on the system."
Newton	588	Number of inspectors has been increased since Hunter's recommendation in May; Newton believes this improved the results.
Newton	575, 581.	Market Street has a chief inspector, 28 regular inspectors and 2 relief inspectors. The inspectors are selected from best qualified experienced platform men. Inspectors now receive \$180 per month. Company application to Wage Stabilization Board in May, 1943, to permit increase to \$200 was denied but new application is being made.
Newton	575	Market Street provides motorcycles for inspectors to increase their efficiency.

Market Street Bottleneck

<u>Witness</u>	<u>Record Page</u>	
Hall	Ex. 11, Table IX (R. 271)	On Market Street just below Sansome 146 out bound cars used the outer tracks and 82 the inner tracks during the 4:30-5:30 p.m.: peak hour on May 24, 1943.
Hall	Ex. 18 (R. 286a)	Traffic flow on Market Street during afternoon peak (Chart).
Cahill	425	At Sansome and Market there are 1,900 cars per 24 hours on outer tracks and 1,100 on the inner tracks. Shift of "K" and "L" cars to inner tracks would equalize this.
Hall	Ex. 11, Table X (R. 271)	Traffic check on May 24 showed average speed of cars on the inner tracks on Market Street to be 5.6 per cent higher than outer track speeds during the morning peak and 17.7 per cent higher during the afternoon peak.
Cahill	420	Mr. Cahill on May 11, 1943, wrote O.D.T. that the S.F. Public Utilities Commission proposes: (1) to lease from Market Street Railway the right to operate its "K" and "L" lines on the inner tracks on Market Street from Fremont Street to Twin Peaks Tunnel. Market Street Railway had suggested that in return for the above privilege they be permitted to operate their "31" and "5" lines on the outer tracks. This, he stated, would nullify the benefits to be gained at the Sansome and Market "bottleneck" by transferring the "K" and "L" lines to the inner tracks; and (2) to lease as many street cars as Market Street Railway can spare.
Hunter	466	There should be an operating agreement between Market and Municipal to achieve better utilization of the track space on lower Market Street and to

**Record
Page**

put as much equipment on the roads as can be manned. Giving Municipal an opportunity to use the inside tracks would speed up service to some extent (See also Ex. 17, R. 286).

- Jahn 524, 525 Suggests as solution to the lower Market Street bottleneck that the city permit Market Street Railway to operate its "N" route. This would release 31 Municipal cars for use on other parts of its system. The "N" line represents 20½ per cent of the car hours on Municipal lines using Market Street.
- Cahill 547 Substitution of service by Market Street for Municipal's "N" line would result in improved over-all service but Cahill does not consider it justifiable to increase the "N" patrons' fare, particularly since they paid for the Duboce Tunnel through assessments.

One-Man Car Operation (See also under Manpower)

- Hunter 490 Operating certain lines with one man (for the duration) would permit of putting more cars on the street.
- Hunter Ex. 17 (R. 285) "With the release of manpower [from suspension of the one-man car ordinance] additional cars and buses should be placed in service."
- Hunter Ex. 17 (R. 284) With one-man operation, consideration should be given to using ground loaders at heavier loading points.

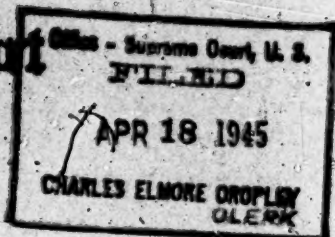
Miscellaneous

- Newton Ex. 29 (R. 341) Changes in operating practices and revisions of routes in accordance with O.D.T. directives or suggestions.

XXX

<u>Witness</u>	<u>Record Page</u>	
Newton	573	Market Street has eliminated about 10 per cent of stops since April, 1942, in line with O.D.T.'s skip-stop program. Skip-stops on Market Street not permitted by the Public Commission.
Hunter	465	Skip-stop program should be expanded in the interest of improving service. Elimination of stops along Market Street would require careful coordination of traffic signals, but it is desirable (See also Ex. 17, R. 286).
Newton	588	About 25 per cent of Market Street's service is by buses at present time.
Kahn	523, 524	Market Street abandoned its Howard Street car line at the request of the city, the franchise having expired and the city thereafter inaugurated trolley coach service on Howard Street.

FILE COPY
In the Supreme Court
OF THE
United States



OCTOBER TERM, 1944

Nos. 510 and 511

MARKET STREET RAILWAY COMPANY,

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and FRANK R. HAVENNER, C. C. BAKER, JUSTUS F. CRAEMER, RICHARD SACHSE and FRANK W. CLARK, the Members of and Constituting the Railroad Commission of the State of California.

Appeals from the Supreme Court of the State of California.

PETITION FOR REHEARING.

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PILLSBURY, MADISON & SUTRO,

Of Counsel.

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Appeals from the Supreme Court of the State of California.

PETITION FOR REHEARING.

We respectfully pray for a rehearing of the above entitled cause.

LACK OF EVIDENCE TO SUPPORT THE ORDER.

The decision of this Court is (1) that a rate reduction order may be based simply on the utility's history, without any evidence as to what new rate is contemplated, and as to what the revenues and expenses under that rate will be; (2) that the Commission's expectations as to such revenues and expenses will be sustained although contrary to the evidence and palpably erroneous.

First, we ask the Court to consider the full impact of its ruling that evidence is unnecessary as to what rate is contemplated, and as to what will be the estimated return under that rate. We have examined the records in many rate cases—all that are available to us. We find no proceeding, prior to the instant one, in which a rate reduction order has been made without such evidence.¹

A fair test of what is fair play (itself a fair test of due process) is to consider the position of a litigant under such a procedure. The utility's operating reports and history are put in the record; the case submitted. No evidence has been introduced as to (1) what is the contemplated rate or (2) what its effect will be on the utility's return. After submission, the Commission for the first time names the rate to be put into effect and bases its finding of a fair return upon its own expectations of what the traffic, revenues and expenses will be under the new rate. These expectations are the essential facts in dispute. They are unsupported by evidence. *At no time has the utility had a chance to prepare evidence on the effect of any specific rate, or by cross-examination and controvert-*

¹The record in this case discloses that such evidence was taken by this same Commission in the earlier proceedings affecting appellant's rate (R. 321).

ing testimony to show that the Commission's estimates are erroneous.

In support of this procedure in the case at bar, this Court says (page 9):²

"The complaint is that the Commission formed its own conclusions without the aid of expert opinions. It is contended that the Commission should draw conclusions from these facts only upon hearing testimony of experts as to the conclusions they would draw from the facts of record. Experts' judgments, however, would not bind the Commission. Their testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning."

We submit that this does not state the effect of expert testimony nor comprehend its function. If all of the Commission's engineers and all of appellant's engineers had joined in unanimous and unimpeached testimony that under present conditions no stimulation of traffic would take place under a 6-cent fare, and that, even if traffic were to increase, expenses would increase correspondingly, surely this Court would not hold that the Commission's finding to the contrary could be sustained.

But the vice of the ruling goes deeper. The Commission's expert opinion—here sustained—has never been subjected to the right of cross-examination and rebuttal. This Court goes only part way when it says that the testimony of an expert would have been simply in the nature of an argument or opinion upon the present record. If

²References herein are to the printed pamphlet opinion.

the Commission had placed one of its engineers upon the stand and he had testified to the estimated traffic, revenues and expense set forth in the Commission's findings, his testimony would have been subject to cross-examination, impeachment and rebuttal. Appellant would not have been confined to an offer of a contrary expert opinion upon the evidence then in the record. It could have impeached the credibility of the witness and his testimony by cross-examination. It could have introduced other evidence to impeach and rebut. Suppose, for example, this Court were now to remand this cause for further proceedings, and the Commission should reopen it solely for the purpose of having one expert testify that the Commission's estimates of traffic, revenue and expense are correct. Obviously the procedure could not be sustained. But the opportunity to answer is equally denied if the expert opinion is that of the Commission rendered after submission. And, as a corollary, the utility is denied the right—equally a part of a fair trial—to have the Commission exercise its judgment in passing upon and evaluating the expert testimony.

This Court says (page 9):

“There is nothing to indicate that any consideration which could be advanced by an expert has not been advanced by the Company in argument and fully weighed.”

Argument of counsel may point out, and judicial analysis discover, the absence or presence of testimony and consider its effect. But argument is not testimony and cannot supply essential testimony. Nor can judicial analysis determine whether argument has covered, if properly it

could, what would be the scope of expert testimony never given. To make the point concrete, the opportunity afforded counsel in this case to argue the incredible character of the Commission's estimate that the expense of carrying 17,000,000 passengers under the 6-cent fare will be only \$60,000 is certainly not a substitute for testimony that \$60,000 is the correct figure. And without such testimony the Commission's finding cannot stand. Nor is the opportunity to make such argument a substitute for appellant's right to introduce evidence that \$60,000 is not the right figure, and to have the Commission pass on that evidence.

This Court says (page 10):

"We find no denial of due process in these circumstances from the fact that the Commission evaluated the Company's experience for itself without the aid of expert testimony."

But this is not what the Commission did. The Commission went far beyond the Company's experience. It made predictions as to passenger traffic, revenues, expenses, wholly outside the Company's experience, under circumstances not covered or discussed in the record and under a noncompetitive fare structure never even mentioned at the hearing and never before tried.

This Court says (pages 9, 10):

"The basis for a judgment is here in the record. The Company itself put in evidence decisions by the Commission in which by cautious steps it permitted advance of the rates from five to seven cents. Traffic records before and after each advance are in evidence. Also in the record is the traffic experience of

the competing municipal line, which did not increase its fares and which did not suffer declines in traffic and revenues comparable to those which followed this Company's increase of fares. . . .

We cannot say that it is a denial of due process for a commission so experienced as the record shows this Commission to have been with the affairs of this particular appellant to draw inferences as to the probable effect on traffic of a given rate decrease on such a record as we have here."

Specifically applied to the record in this case, this is a holding that the history of the effect of the fare increases from 5 to 7 cents in 1938 is evidence which supports the findings of the Commission as to traffic, revenues and expenses under a 6-cent fare in 1944.

This simply is not so. The 1938 fare increases occurred in years of depression when transportation facilities were more than adequate to handle all traffic. They ended a competitive uniform 5-cent fare. In 1944 equipment was loaded by the swollen population of a wartime port; people were in a period of high earnings, and a fare differential was no longer a factor in the distribution of traffic. The 6-cent fare retained a differential of one cent between the fare of the Market Street Railway and the 5-cent fare of the Municipal Lines. The 1938 fare increases are no evidence of what would be the effect of a one-cent reduction in 1944.

Beyond this, the Commission's essential findings are contrary to the evidence. These findings were that under the 6-cent fare traffic would increase by some 17,000,000

passengers (from this finding it derived its revenue figure), and that expenses would increase only \$60,000. Upon these findings, of course, rests the Commission's essential finding that appellant will earn a return under the 6-cent fare.

The *only* evidence pertinent to the traffic point is that *at the present time* the amount of fare does not affect traffic. This was the testimony of the two men in San Francisco probably best qualified to speak, Mr. Cahill, Manager of San Francisco's Public Utilities, and Mr. Hunter, Chief of the Engineering Division of the Commission's Transportation Department.

Mr. Cahill testified (R. 431):

"* * * I think that under the present financial conditions of the people they have money enough, when they want to go somewhere, to pay the two fares and they do it. They do not refuse to go to 3rd and Townsend from out in the Richmond District because it costs 7 cents on the Market Street and 5 cents on the Municipal. They pay it and go."

Mr. Hunter testified (R. 467):

"But I think the important thing today is to get transportation of any kind. I think the public is willing to pay if you will give them some service."

The *only* evidence on the expense point is the testimony of Mr. Kahn and the historical operating figures set forth in the record. Mr. Kahn testified that in general expense varies with traffic (R. 536-537). The operating figures bear this out (R. 200A). The Commission's own finding is that appellant's costs in 1943 were 6.62 cents per pas-

senger.³ Yet the Commission reduces the fare to 6 cents—a point below actual cost—and says appellant will earn money under this rate because it will carry 17,000,000 additional passengers for only .359 cents per passenger—a finding directly against the evidence, clearly erroneous, and, we contend, arbitrary beyond precedent.

Every event bearing on this unhappy controversy confirms the result of the lack of due process in the Commission's procedure. This Court may take judicial notice of a report issued by the Public Utilities Commission of San Francisco on March 20, 1945, concerning the operations of the two lines in San Francisco up to March 1 of this year under the uniform 7-cent fare. In that report, Mr. Cahill, Manager of Utilities, states:

"It was expected that consolidation would result in a redistribution of patronage, because of the equalization in fare, giving the former Market Street lines at least 57 per cent of the business. In some quarters, it was estimated that the Market Street lines would get 65 per cent of the business."

This change has not taken place. The distribution of traffic between the two systems, even though now consolidated and with the universal transfer in effect, is almost fifty-fifty."

We have already pointed out⁴ that, under the 6-cent fare, appellant's actual operations show a loss during the

³R. 87—operating expenses of \$7,940,000 for 120,000,000 passengers.

⁴Brief for Appellant, p. 6.

seven-month period from March 1, 1944, to September 29, 1944, of some \$357,000.

It is difficult to conceive of a case in which the result could be more unjust. Appellant does not ask for an order turning over to it the amount of impounded fares. It asks simply for a hearing at which it will be afforded the right to have the Commission take evidence upon the facts essential to its decision and base its findings and order upon the evidence.

MATTERS OUTSIDE THE RECORD.

This is the first case in which this Court, and so far as we can learn any court, has held that an administrative body may consider matters outside the record, not subject to judicial notice.

This Court says (pages 10-11):

"It does not appear that the Company was in any way prejudiced, and it makes no showing that, if a rehearing were held to introduce its own reports, it would gain much by cross-examination, rebuttal, or impeachment of its own auditors or the reports they had filed."

It is quite true that appellant would not impeach or rebut its own auditors or reports. But most certainly it would develop, by cross-examination, explanation and supplementary evidence, facts which would destroy the conclusion drawn by the Commission from these reports.

This Court says:

"The most that can be said is that the Commission in making its predictive findings went outside of the record to verify its judgment by reference to actual traffic figures that became available only after the hearings closed."

This is just not so. Counsel for the Commission now say that this is what the Commission did, but the record refutes them. If the record in this case is clear on anything, it is clear on the fact that the Commission did *not* "verify" its predictive findings by later reference to later figures, but instead "*based*" its predictive findings on those figures. Nothing can be plainer than its own finding in this regard (R. 87), nor its allegation to the same effect in its answer to the petition for writ of review in the court below (R. 37-38).

This Court says (page 10):

"No contention is made here that the information was erroneous or was misunderstood by the Commission, and no contention is made that the Company could have disproved it or explained away its effect for the purpose for which the Commission used it."

On the contrary, appellant does make exactly this contention.⁵ The Commission used these reports for the purpose of proving its upward "trend" in traffic revenues. Surely, appellant has the right to show by explanation and supplementary evidence that the "trend" found by the Commission is erroneous.

⁵See Reply Brief for Appellant, p. 20.

These reports are not in the record and cannot be made a part of the record,⁶ and we considered that their contents were not properly before this Court. But in view of the Court's ruling we point out that the contents of these reports themselves demonstrate that the Commission grievously erred in the conclusion drawn from them. It will be recalled that the Commission's chart⁷ showed a continuing upward trend of traffic. As a matter of fact, appellant's reports for 1943 show a traffic "trend" that plots in a horizontal line. The figures are as follows:⁸

January	9,682,656
February	9,177,565
March	10,325,145
April	9,944,746
May	9,787,220
June	9,598,754
July	9,831,513
August	9,885,710
September	9,745,928
October	10,089,933
November	9,775,150
December	9,730,148

In its findings and in its presentation to this Court the Commission took from the reports outside the record the overall figure of the first eight months of 1943 and compared it with the first eight months of 1942—not disclosing that the missing reports demonstrated that the upward

⁶Section 67 of the Public Utilities Act of California, quoted in Brief for Appellant, p. 56.

⁷Brief for Appellant, p. 41.

⁸None of these figures after April is in the record, but we feel that we are warranted in bringing them to the attention of this Court in view of its suggestion that prejudice must be shown.

curve in passenger traffic had ended and that the so-called "trend" of revenue passengers had become a horizontal line.

This goes to the very heart of the Commission's case. It is serious prejudice. Earnestly we beg this Court not to foreclose appellant from the opportunity, to which clearly it is entitled, to show by the reports, themselves, and by supplemental and explanatory evidence, that the conclusions drawn by the Commission from the reports are erroneous.

Another thing. It manifestly is prejudicial to allow the Commission to take from these reports its figures of increased revenue and traffic, and at the same time to deny appellant the right to refer to the same reports to show figures of expense that flatly rebut the Commission's finding that 17,000,000 additional passengers can be carried for \$60,000.

Further, this Court, as well as appellant, is entitled to have in the record all the evidence upon which the Commission acted, in order that it may discharge its duty to determine whether the substantial rights of the parties have been invaded.

We ask the Court to reconsider another feature of its decision. The Court holds that even though the administrative body goes outside the record, prejudice must be shown before the order will be set aside. But how are parties to demonstrate, and how is a court to determine, whether the "ultimate rights of the parties" have been prejudiced? Ought parties to file with the court copies of the documents which form no part of the record? Is the

reviewing court then to determine whether these documents are material? If so, is its determination to rest on the documents alone or on additional matters which counsel may file to show what could have been shown by way of explanation or rebuttal? Will such explanatory and rebutting evidence be received in the reviewing court? Under the California statute this cannot be done.⁹ If the missing documents are in the Commission's files, will the court issue a subpoena to require their production? Under the California statute the court may require a certification only of the record before the Commission.¹⁰

We submit that the procedure of an administrative body is invalid when that body goes outside the record in making its findings, and that the additional burden of showing prejudice is not required. Such a burden would be impossible to discharge, because the very fact that the missing matters are outside the record makes it impossible to demonstrate prejudice to the reviewing court. As the members of this Court well know, cross-examination develops matters which might not otherwise appear or even occur to either party. To substitute for that right merely the opportunity to argue materiality is a denial of a fundamental right.

In *Powhatan Mining Co. v. Ickes* (6th C.C.A., 1941) 118 F.(2d) 105, the administrative agency refused to divulge information in its own files explanatory of tabulations put by it in evidence. This was held a denial of a fair hearing. In reversing the order the court said (pp. 109, 110):

⁹Section 67 of the Public Utilities Act of California, quoted in Brief for Appellant, p. 56.

¹⁰Section 67 of the Public Utilities Act of California, quoted in Brief for Appellant, p. 56.

"It is argued that apart from the tabulations, there is sufficient evidence supporting the director's findings. But we may not assume that the director would have made the same findings if full hearing had been accorded. The statute requires that in this proceeding notice and hearing be given, and this means that facts and circumstances which ought to be considered must not be excluded, and that the trier of the facts must make his findings based upon the evidence. In other words, the order itself must be based upon full hearing. * * * As the cross-examination was erroneously excluded, we are unable to say how it might have illuminated the controversy, or how the director would have regarded the facts in evidence in light of further facts which might have been elicited. * * *

The fact that the director's order might be justified on the merits does not obviate the requirement of a fair trial."

In *Kline v. United States* (D. Neb. 3 Judge Ct. 1941) 41 F. Supp. 577, a suit to set aside an order of the Interstate Commerce Commission, the Commission's findings referred to applications in its own records filed by plaintiff's predecessor. These applications were not put in evidence. In setting aside the administrative order, the court said (pp. 582-583):

"The records in the matter of the applications filed by Harris and Cotton with the Commission were not introduced or received in evidence at the hearing before the Examiner. The petitioner urges that this is error affecting the substantial rights of the applicant."

The defendants urge that the Commission may take notice of its public records. Upon the making and filing of the report, findings and conclusions of the Commission, the petitioner filed an application for further hearing, and for oral argument because of the foreign matter contained in the findings. The Commission denied this application.

* * * The petitioner was deprived of his right to cross-examination, and of a testing of the truth of the statements appearing in said two applications. We think that this procedure violated the essential rights of a full and fair hearing. * * * The fact that the final order of the Commission might be justified on the merits does not obviate the requirement of a fair trial. The requirement of a fair trial is binding on administrative agencies, as well as on the Courts."

It is not a harsh rule to ask that an administrative body conform to constitutional requirements and act only upon evidence, subject to cross-examination, explanation and rebuttal. Such a rule cannot prejudice the ultimate or substantial rights of any person.

Nevertheless, if a showing of prejudice is required, we submit such a showing clearly has been made in the present case.

CONFISCATION.

Regardless of rate base confiscation takes place if an order compels operation at a loss.

This Court says (page 15):

"If the expectations of the Commission as to traffic increase were well founded, it would earn under this rate on the salvage value of its property, which is the only value it is shown to have."

What we have said shows that appellant would not and could not earn anything under the 6-cent rate. The record shows a cost per passenger of approximately 6.62 cents. The evidence shows that no stimulation would occur, and that, even if an increase should occur, added expense would still result in operations at a loss.¹¹

But this Court says (page 15):

"If expectations of increased traffic were unfounded, it could probably not earn a return from any rate that could be devised."

This is just not so. The fact is that appellant, under the 7-cent fare, *was earning a little money*. Surely it cannot be said that because a company is in a desperate financial condition and cannot earn a fair return on its investment, it can be compelled by a public commission to reduce its rates from a point where it is earning *some* return to a point where it is compelled to operate at a loss.

The foregoing comments also apply to what this Court says in distinguishing the *Hope* case (page 14):

¹¹Brief for Appellant, pp. 66-67.

"There was no suggestion that less might not be allowed when the amount allowed was all that the company could earn."

We ask the Court again to consider its full statement (page 15):

"Under these circumstances we do not find that anything has been taken from the appellant by the impact of public regulation. If the expectations of the Commission as to traffic increase were well founded, it would earn under this rate on the salvage value of its property, which is the only value it is shown to have. *If expectations of increased traffic were unfounded, it could probably not earn a return from any rate that could be devised.*"

This is the foundation of the Court's decision and is, we most respectfully submit, clearly erroneous. Appellant was earning a return under the 7-cent fare. How can it be said that nothing has been taken from it by the impact of public regulation when the fare reduction results in requiring it to operate at a loss? It is not necessary to speculate what loss it might suffer under some other fare. Under the 7-cent fare the operations were profitable; under the ordered fare, confiscatory.

The decision in this case is unjust. We believe it to be contrary to constitutional principles. Its impact, of course, will be upon the stockholders of the Market Street Railway in liquidation, the return to whom in any event will be meager enough. But it involves principles of greatest im-

portance. We are fully cognizant of the reluctance of this Court to grant a rehearing, but we urge that grounds for such action here exist. We pray that the Court grant this petition, and that upon further consideration, the judgment of the court below be reversed and the cause remanded to the Commission for further proceedings.

Dated, San Francisco, California,

April 12, 1945.

Respectfully submitted,

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

PHILSBURY, MADISON & SUTRO,

Of Counsel.

CERTIFICATE OF COUNSEL.

We, Cyril Appel, Felix T. Smith, Francis R. Kirkham and Henry G. Hayes do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,

April 12, 1945.

CYRIL APPEL,

FELIX T. SMITH,

FRANCIS R. KIRKHAM,

HENRY G. HAYES,

Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

Nos. 510 and 511.—OCTOBER TERM, 1944.

510 Market Street Railway Company,
 Appellant,
 vs.
Railroad Commission of the State of
California, Frank R. Havenner,
C. C. Baker, et al., etc.

511 Market Street Railway Company,
 Appellant,
 vs.
Railroad Commission of the State of
California, Frank R. Havenner,
C. C. Baker, et al., etc.

On Appeal from the Su-
preme Court of the
State of California.

[March 26, 1945.]

Mr. Justice JACKSON delivered the opinion of the Court.

Two appeals have been taken from a single judgment of the Supreme Court of California because counsel was uncertain when the judgment became final for our jurisdictional purposes. The decision was rendered July 1, 1944; it concluded, "The order is affirmed"; a petition for rehearing was denied July 27, 1944. The first appeal was applied for and allowed on July 31, 1944. If the judgment became final on denial of rehearing, this appeal was timely. However the California Rules on Appeal expressly provide that a decision of the Supreme Court "becomes final thirty days after filing unless otherwise ordered prior to the expiration of said 30-day period."¹ Remittitur does not issue until the end of

¹ Rule 24(a) provides: "[When decisions become final] All decisions of the reviewing courts shall be filed with the clerk. A decision of the Supreme Court becomes final 30 days after filing unless otherwise ordered prior to the expiration of said 30-day period. Pursuant to article VI, section 4c, of the Constitution, a decision of a District Court of Appeal becomes final as to that court, 30 days in civil cases and 15 days in criminal cases after filing, and thereafter is not subject to modification or rehearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is

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the 30-day period.² It issued on August 1 and certified, according to practice, that "the foregoing is a true copy of an original judgment entered in the above entitled cause on the 1st day of July, 1944; and now remaining of record in my office." If the date of its issue, being also the date of finality fixed by the rule, governs finality for purposes of our jurisdiction, the judgment was not a final one at the time the first appeal was granted. On the chance that it might be dismissed as premature, a second appeal was presented and allowed on September 21.

Our jurisdiction to review a state court judgment is confined by long-standing statute to one which is final. Judicial Code, § 237, 28 U. S. C. § 344. Final it must be in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court.

We have held that finality of a judgment of a state court for determining the time within which our jurisdiction to review may be invoked is not controlled by the designation applied in state practice. *Department of Banking v. Pink*, 317 U. S. 264; *Cole v. Violette*, 319 U. S. 581. The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment. The waiting period prescribed by the statute here seems to reserve a power of that character. The decision during this period does not lack the attributes of an adjudication, it is not awaiting lapse of time to become a judgment, it merely is subject to modification. When this period runs, unless the court has moved meanwhile, it becomes powerless to change or modify the judgment. *Oakland v. Pacific Coast Lumber*

modified during that time, the period specified herein begins to run anew, as of the date of modification." Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California, effective July 1, 1943. See 22 Cal. 2d 1.

² Rule 25 so provides. "A remittitur shall issue after the final determination of any appeal, or of any original proceeding in review in which an alternative writ or order to show cause has been issued. Unless otherwise ordered, the clerk of the Supreme Court shall issue the remittitur when a judgment of that court becomes final" Rule 25(a). "For good cause shown, or on stipulation of the parties, the Supreme Court may direct the immediate issuance of a remittitur." Rule 25(b). For discussion of this rule see *Within, New California Rules on Appeal (1944)* 17 So. Calif. L. Rev. 248 et seq.

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Co., 172 Cal. 332, 337; *Estate of Ross*, 189 Cal. 317, 318. The rule thus a limitation on the time during which the court may reconsider, which in absence of such rule might expire only with the end of the term or some other event determinative under local law. Such latent powers of state courts over their judgments are too variable and indeterminate to serve as tests of our jurisdiction. Our test is a practical one. When the case is decided, the time to seek our review begins to run. A timely petition for rehearing defers finality for our purposes until it is acted upon or until power to act upon it has expired as here it would appear to do at the end of the 30-day period.³ If rehearing is granted, the judgment is opened, and does not become final as a prerequisite to application for review by us until decision is rendered upon rehearing.

We postponed consideration of jurisdiction until hearing on the merits.⁴ We hold that this judgment became final on denial of rehearing, that the first appeal was timely and that the precautionary second appeal is duplication. Accordingly the appeal in No. 511 is dismissed and that in No. 510 is entertained upon its merits.

The Market Street Railway Company at the commencement of these proceedings operated a system of passenger transportation by street car and by bus in San Francisco and its environs. The Railroad Commission of California instituted on its own motion an inquiry into the Company's rates and service. After hearings, an order was promulgated reducing the fare from seven to six cents.⁵ The Company, after rehearing was denied,⁶ obtained review by the Supreme Court of California. It also obtained a stay of the Commission's order, conditioned upon impounding the dis-

³ "The Supreme Court or a District Court of Appeal may grant a rehearing in any cause after its own decision; and any cause pending in a department of the Supreme Court may be ordered heard by the Supreme Court in bank. A rehearing or hearing in bank may be granted on petition, as provided in subdivision (b) of this rule, or on the court's own motion, prior to the time the decision becomes final therein." Rule 27(a).

"An order of the Supreme Court granting a rehearing shall be signed by at least 4 justices assenting thereto, and filed with the clerk; and a hearing in bank after decision in department may be ordered as provided in article VI, section 2, of the Constitution. If no order is made before the decision becomes final, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect." Rule 27(e).

⁴ — U. S. —.

⁵ The opinions are reported in 45 Cal. R. C. Dec. 53.

⁶ The opinion on rehearing is reported in 45 Cal. R. C. Dec. 162.

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puted one cent per passenger to abide settlement of the issues upon which its ownership would depend. The Supreme Court of California affirmed the order⁷ and appeal is taken to this Court. Meanwhile the Company sold its operative properties to the City of San Francisco. The case is saved from being moot only because its decision is necessary to determine whether the Company is entitled to the impounded portion of the fares or whether the money shall be refunded to passengers making claims and unclaimed amounts thereof be paid over to the state, as required by conditions of the stay order.

The appeal raises constitutional issues only. The contention is that the order deprives the appellant of its property without due process of law, contrary to the Fourteenth Amendment. Appellant claims denials of due process in matters of procedure in that it had no adequate notice that its rates were under attack or adequate opportunity for a hearing thereon, that the order in several vital particulars is not supported by substantial evidence or by any evidence, and that it was improperly based on matters outside of the record on which there was no opportunity to cross-examine or to be heard. It claims a taking of its property as a result of the order on the ground that it would force the Company to operate at a loss because the Commission used a rate base of \$7,950,000, the price at which appellant had offered to sell its operative properties to the City, and did not consider reproduction cost, historical cost, prudent investment, or capitalization bases, on any of which under conventional accounting the six-cent fare would produce no return on its property and would force a substantial operating deficit upon the Company.

The appellant in support of its contentions that it has been denied due process in procedure and has been subjected to an unconstitutional taking of its property invokes many decisions of this Court in which statements have been made that seem to support its contentions. But it should be noted at the outset that most of our cases deal with utilities which had earning opportunities, and public regulation curtailed earnings otherwise possible. But if there were no public regulation at all, this appellant would be a particularly ailing unit of a generally sick industry. The problem of reconciling the patrons' needs and the investors'

⁷ The Court's opinion is reported in 150 P. 2d 196.

hts in an enterprise that has passed its zenith of opportunity and usefulness, whose investment already is impaired by economic crises, and whose earning possibilities are already invaded by competition from other forms of transportation, is quite a different problem. The Company's practical situation throws important light both on the question whether the rate reduction hastens its property and also upon the criticisms it makes of the conduct of the hearings.

Transportation history of San Francisco follows a pattern not unfamiliar. This property has passed through cycles of competition, consolidation and monopoly, and new forms of competition; has seen days of prosperity, decline, and salvage. In the 1850's omnibus service began to operate in San Francisco. In the 1860's came the horse car. The 1870's saw the beginning of the cable car, for which the contour of the city was peculiarly adapted. The Market Street Railway Company was incorporated in 1893 and took over 11 of the 17 street car lines then independently operated in the city. In 1902, United Railroads of San Francisco was organized. This consolidated under one operating control properties of the Market Street Company and five other lines, comprising 229 miles of track, much of which was cable-operated. It suffered greatly from the earthquake and fire of 1906, but carried out a considerable program of reconstruction between 1906 and 1910. In 1921 it failed to pay interest on outstanding bonds. Bondholders acquired the properties and reorganized the Market Street Railway Company, which had been a dormant subsidiary of United, to operate them.

In 1912 the City and County of San Francisco began operation of a municipal street railway line. This line is not and never has been under the Railroad Commission's jurisdiction. It expanded rapidly, its routes in some instances parallel those of appellant, and its competition has been serious. Throughout the period of competition the municipal lines have operated on a five-cent fare. The Market Street Line also operated on a five-cent fare until July 1937. In that year it applied to the Commission for an increase to a seven-cent fare. This was denied, but a two-cent transfer fare and other adjustments were authorized. In March 1938 the Company again petitioned for a seven-cent fare, with reduction for school children. The Commission authorized a seven-cent fare, but required some concession to token buyers. A few

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months later the Company again asked a straight seven-cent fare and relief from the token rate. The Commission directed the Company to apply to the City for permission to abandon certain lines and to protect it against "jitney competition," stipulating that the seven-cent fare could be made effective if the City failed to respond. The City did not act, and the seven-cent fare became effective January 1, 1939.

But the increase of fare brought no increase of revenue. Both traffic and revenue continued to decline, and in 1941 reached the lowest point in twenty years. Then came war, bringing accelerated activity, increase of population of the city, rubber and gas shortage, restrictions on purchase of new and retirement of many old automobiles. Traffic and revenues showed a sudden increase. The Commission found, however, that the service had constantly deteriorated and was worse under the seven-cent fare than under the former five-cent rate. It recognized that some of the causes were beyond the Company's control. But after allowance for those causes, it also found evidence of long-time neglect, mismanagement, and indifference to urgent public need. It found the Company's service inferior to the service of the municipal lines, although appellant charged a 40 per cent higher fare. Defects in service consisted of failure to operate on schedule, long intervals between cars, followed by several cars operating with little headway, overloading, inadequate inspection, and inadequately maintained rolling stock. The Company had some 70 cars out of operation and in storage because of shortage of manpower. Its street car rolling stock was obsolete, 73 electric cars and 12 cable cars being out of service. None of the cars was modern. The municipal lines had tried to lease the unused cars for operation on its lines, but the Company refused. The City was denied priorities for purchase of new busses by federal authorities because of idle rolling stock in the city. The Commission concluded that the reason for the Company's declining to lease for a fair rental rolling stock it could not use was fear of competition. The Company was handicapped in manpower, the municipal lines offering somewhat better wages and working conditions that seemed more attractive. The entire system was suffering from deferred maintenance, the amount expended for way and structures maintenance having been steadily reduced, both in dollars and in proportion of total operating costs.

The Commission disagreed with the Company as to the use to be made of war-time increase in revenues. The Company said it had no definite plan for setting aside anything for maintenance. The management thought its first obligation was to discharge its debts. The Commission took the view that allowances for depreciation as part of the costs of operation should be spent in replacement of depreciated property, and not for payment of debts.

Reviewing the financial results of fare increases, the Commission concluded that the Company would reap no lasting benefit from rates in excess of five cents, due to the tendency of a higher rate to discourage patronage. The war (traffic) the Commission thought temporary. But it concluded that a six-cent fare would sufficiently stimulate traffic to leave after operating expenses approximately a six per cent return on a rate base of \$7,950,000. This was the figure at which the Company had offered to sell its operative properties to the City. Accordingly the Commission found the six cents to be a reasonable rate to the Company and to be all or more than the reasonable value of the services being rendered to patrons. It considered this rate to be experimental and kept the proceeding open for such further orders as might be just and reasonable. The Company applied for rehearing on substantially the grounds it urges here. Its arguments were considered at length in an opinion which denied rehearing. The Supreme Court of California overruled all of the Company's objections and affirmed the Commission's order.

The reduced rate never took effect. The Company obtained delay from the Commission and a stay order from the Court. It then sold its properties to the City, which took over and continued the seven-cent fare. So the anticipations of the Commission as to increased patronage from the rate reduction never have been put to the test of experience. Our review considers only whether the order was valid when and as made.

I. Appellant says that the order is invalid because it was denied a fair hearing, given no adequate notice that its rates were under attack, and hence was afforded no opportunity for a hearing on the reasonableness of its rates. We find this contention to have no foundation in the record. The order of the Commission instituting the proceeding recited its belief "that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered" by appellant, and investigation was ordered of both. Due notice of the

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proceeding was given and it was entitled an investigation "into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the" service. The hearing was opened with a similar statement by the Commission. The record is replete with evidence that would have no bearing on the questions of service except as fares were involved. Experts of the Commission testified at length as to financial history and rate experience of the Company. The Company's president testified concerning the rate situation and the Company's experience with the seven-cent fare. Its counsel put in evidence the Commission's former decisions authorizing increases in fares.

The Company particularly complains that it had no notice that the Commission was receiving evidence of its offer to sell its properties for \$7,950,000 for use as a rate base. The offer was received in evidence without limitation or statement of its purpose. Nothing appears to mislead or entrap the Company or to lull it into a sense of security. It seems simply to have assumed that no explanation of the offer was necessary. Doubtless the decision and the grounds of decision were unexpected. But surprise is not necessarily want of due process.

We find that the Company had reasonable notice that its rates were under attack and was not denied opportunity to be heard thereon. We can well understand how counsel's attention became diverted to more sharply contested aspects of the case. But even if a more convincing showing were made that the Company had relevant evidence to be heard, we find no adequate excuse for the failure to offer it in the proceeding. No offer was rejected, no request for time to obtain such evidence was denied. A misapprehension by a litigant of the steps which its best interests require during a trial may be appealing grounds for a plea to the discretion of the hearing tribunal for another chance, but it is not grounds for our interference as a denial of constitutional rights.

2. It is next contended that the order is invalid under the due process clause because it is unsupported by evidence and is based on the Commission's speculation and conjecture. This charge relates particularly to those findings which predict the effect of a rate reduction in stimulating traffic. The Commission's estimates and predictions do not follow any particular testimony. Appellant urges that such predictive findings may be made only on expert

testimony, subject to cross-examination, explanation, and rebuttal, and may not be based on the Commission's own expert knowledge. Various considerations are advanced to show that the Commission's predictions were based on innocent analysis and were improbable.

Appellant relies upon our holding in *Ohio Bell Telephone Co. v. Public Utility Commission*, 301 U. S. 292. In that case the Commission ordered refunds "upon the strength of evidential facts not spread upon the record." This consisted "of information secretly collected and never yet disclosed. The company protested. It asked disclosure of the documents indicative of price trends, and an opportunity to examine them, to analyze them, to explain and to rebut them. The response was a curt refusal. Upon the strength of these unknown documents refunds have been ordered for sums mounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs today. This is not the fair hearing essential to due process. It is condemnation without trial." *Id.* at 300. Nothing of that kind occurred in this case. The basis for a judgment is here in the record. The Company itself put in evidence decisions by the Commission in which by cautious steps it permitted advance of the rates from five to seven cents. Traffic records before and after each advance are in evidence. Also in the record is the traffic experience of the competing municipal line, which did not increase its fares and which did not suffer declines in traffic and revenues comparable to those which followed this Company's increase of fares. This is not a case where the data basic to a judgment have been withheld from the record. The complaint is that the Commission formed its own conclusions without the aid of expert opinions. It is contended that the Commission should draw conclusions from these facts only upon hearing testimony of experts as to the conclusions they would draw from the facts of record. Experts' judgments, however, would not bind the Commission. Their testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning. There is nothing to indicate that any consideration which could be advanced by an expert has not been advanced by the Company in argument and fully weighed.

We cannot say that it is a denial of due process for a commission so experienced as the record shows this Commission to have been with the affairs of this particular appellant, to draw inferences as to the probable effect on traffic of a given rate decrease on such a record as we have here. Particularly would a conclusion of denial of due process be unwarranted where, as here, the Commission recognized the infirmity of any predictions, regarded its rate order as a temporary experiment for which no fixed period was set, and held open the proceeding to receive whatever lessons experience might teach. Its step here is after all only receding, on experience, from steps it earlier had taken to advance the rate, which also had been regarded as experimental and as to which experience had disappointed expectations. We find no denial of due process in these circumstances from the fact that the Commission evaluated the Company's experience for itself without the aid of expert testimony.

3. It also is urged that the order is invalid under the due process clause because it is based on matters outside the record. The decision of the Commission stated that "In the eight months' period, January to August, inclusive, of 1943 the operating revenues of the company amounted to \$5,689,775," and compared this with the operating revenues for the same period of 1942 and found an increase of 20 per cent. On this basis it estimated the total for the full year of 1943 under the prevailing seven-cent fare. Challenged upon the ground that the operating revenues from January to August of 1943 were not in the record, the Commission admitted that these figures were taken from the appellant's monthly reports filed with the Commission. It contended that even if it was in error to refer to such reports, the error was harmless, since the record without the figures supported the reasonableness of the six-cent fare and it was therefore immaterial that the Commission used some additional figures. No contention is made here that the information was erroneous or was misunderstood by the Commission, and no contention is made that the Company could have disproved it or explained away its effect for the purpose for which the Commission used it. The most that can be said is that the Commission in making its predictive findings went outside of the record to verify its judgment by reference to actual traffic figures that became available only after the hearings closed. It does not appear that the Company was

in any way prejudiced thereby, and it makes no showing that, if a rehearing were held to introduce its own reports, it would gain much by cross-examination, rebuttal, or impeachment of its own auditors or the reports they had filed. Due process, of course, requires that commissions proceed upon matters in evidence and that parties have opportunity to subject evidence to the test of cross-examination and rebuttal. But due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties. The process of keeping informed as to regulated utilities is a continuous matter with commissions. We are unwilling to say that such an incidental reference as we have here to a party's own reports, although not formally marked in evidence in the proceeding, in the absence of any showing of error or prejudice constitutes a want of due process.

4. The order is said to be invalid under the due process clause because it is based in part on the so-called "value of service" theory. It is urged that "a confiscatory rate cannot be sustained on the theory that it is an adequate price for the service independently valued" and there is no evidence justifying a rate reduction on the theory of the value of the service.

The question whether a confiscatory rate can be justified because service is bad can only be reached when we find a prescribed rate to be confiscatory. As we do not find this rate to be such, we do not need to pronounce upon the abstract doctrine as to the validity of the "value of service" theory as justifying rates that do not yield a fair return. The Commission in this case did not make an independent valuation of the service to patrons and fix rates accordingly.

The consideration of service as a justification for rates arises in this case upon a comparison of the service of the Company under the five-cent rate and under the seven-cent rate. The Commission found that the 40 per cent increase of rate had been accompanied by a deterioration of service. Some factors in the bad service were beyond the Company's control; others were found not to be without remedy by good management. Certainly if the increased fare had been accompanied by an improved service, it would be used as an argument by the Company, and a powerful one it would be, for the continuance of the higher rate. That higher rates failed to improve, failed even to maintain, service certainly removed one of the justifications for the increase which

the Company was enjoying. It must not be forgotten that the increases that the Commission had allowed were also experimental. So far as the public was concerned the experiment with the seven-cent rate yielded them no better immediate service and, because of the Company's policies, gave them no prospect of more permanent service. In fact, by discouragement of patronage it threatened the continuance of the service.

Under these circumstances the Commission did not put a monetary value on a street car ride as the basis of the fare. Using the Company's service under the five-cent fare as a standard, it found that the public—aside from the service to war plants, which was admittedly good—was receiving no more transportation service for seven cents than it had received at five, and at the same time the Company was not receiving increased revenues because the price of the service had exceeded the value that the public put upon it and it had thereby withdrawn its patronage.

Certainly the due process clause of the Constitution is not violated when a commission takes into consideration practical results to the public of advances which it has allowed in rates. To the extent that the Commission was influenced by considerations of the value of the service in this case, we find nothing that denies the Company any rights possessed under the Federal Constitution.

5. The order is asserted to be invalid because it is said to be confiscatory and to compel appellant to operate at a loss. The Commission used a rate base of \$7,950,000, the price at which the property had been offered to the City, and the six-cent rate is not calculated to permit any return on a greater valuation. Before we consider the validity of this rate base, we may well consider what alternatives the case presents. No study of the present cost of reproduction is shown, no present fair value is suggested. Nor do we think it important. Apart from familiar objections to the reproduction-cost method, no responsible person would think of reproducing the present plant, consisting in substantial part of cable cars and obsolete equipment. There is no basis for assuming that any one in the light of conditions which prevail in the street-surface railroad industry generally would consider reproducing any street railway system. It was no constitutional error to proceed to fix a rate in disregard of theoretical reproduction costs.

The Commission in 1920 made a valuation study of appellant's properties and found an historical reproduction cost of road and

equipment to be \$29,715,147. This valuation, brought forward by adding additions and betterments and deducting retirements, shows a total amount for road and equipment as of December 31, 1942 of \$25,343,543.

Actual investment is not disclosed by the record. It does disclose that the book value of appellant's properties as of December 31, 1942 was \$41,768,505.20.

The Company's outstanding securities at the end of 1942, issued with the approval of the Commission, totaled \$37,921,323.96 at face value. They consisted of common stock of over \$10,000,000; 3 different classes of preferred stock of \$21,000,000; first mortgage bonds of \$4,217,500; equipment notes of \$735,748.28; and additional long-term debt of \$1,041,625.68.

Not one of these nor any combination of them affords a practical or possible rate base, nor does the Company suggest that allowance of any rate will earn it a return upon any of these. It has not itself ventured to ask a rate higher than seven cents, although the inadequacy of its yield to take care of the financial requirements of the Company has for some time been apparent. This company obviously is up against a sort of law of diminishing return; the greater amount it collects per ride, the less amount it collects per car mile. It has long been recognized that this form of transportation could be preserved only by the most complete cooperation between management and public and the most enlightened efforts to make the service attractive to patrons.⁸ It is obvious that, for whatever cause, the appellant has not succeeded in maintaining its service on a paying basis.

⁸ In May of 1919 the Secretary of Commerce and the Secretary of Labor joined in a letter to President Wilson, advising him that 50 or more urban street railway systems representing a considerable percentage of the electric railway mileage was in the hands of receivers, affecting some of the largest cities of the country, and that other systems were on the verge of insolvency and the industry as a whole was virtually bankrupt. They urged the appointment of a commission to study and report upon the problem. President Wilson on June 1, 1919 named a commission which held extensive public hearings. The first witness was ex-President William Howard Taft, speaking for the National War Labor Board, and others, including leading municipal and railway officials and such experienced persons in the problem of regulation as Newton D. Baker, Milo R. Maltbie, Morris L. Cook, Joseph B. Eastman, and many others. Proceedings of the Federal Electric Railways Commission, v. 1. An exhaustive report with many recommendations was made. See Analysis of the Electric Railway Problem prepared for the Federal Electric Railways Commission by De Lós F. Wilcox, New York City, 1921. Its recommendations were extensive, including certain changes both by the municipalities and by the companies affected. The recommendations were not generally heeded by either.

14 *Market St. Ry. Co. vs. Railroad Com'n of California et al.*

It is idle to discuss holdings of cases or to distinguish quotations in decisions of this or other courts which have dealt with utilities whose economic situation would yield a permanent profit, denied or limited only by public regulation. While the Company does not assert that it would be economically practicable to obtain a return on its investment, it strongly contends that the order is confiscatory by the tests of *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, 603, 605, from which it claims to be entitled to a return "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital" and to "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed." Those considerations, advanced in that case (which was reviewed pursuant to statute rather than under the Fourteenth Amendment), concerned a company which had advantage of an economic position which promised to yield what was held to be an excessive return on its investment and on its securities. They obviously are inapplicable to a company whose financial integrity already is hopelessly undermined, which could not attract capital on any possible rate, and where investors recognize as lost a part of what they have put in. It was noted in the *Hope Natural Gas* case that regulation does not assure that the regulated businesses make a profit. 320 U. S. at 603; see *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575, 590. All that was held was that a company could not complain if the return which was allowed made it possible for the company to operate successfully. There was no suggestion that less might not be allowed when the amount allowed was all that the company could earn. Without analyzing rate cases in detail, it may be safely generalized that the due process clause never has been held by this Court to require a commission to fix rates on the present reproduction value of something no one would presently want to reproduce, or on the historical valuation of a property whose history and current financial statements showed the value no longer to exist, or on an investment after it has vanished, even if once prudently made, or to maintain the credit of a concern whose securities already are impaired. The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.

The owners of a property dedicated to the public service cannot be said to suffer injury if a rate is fixed for an experimental period, which probably will produce a fair return on the present fair value of their property. If it has lost all value except salvage, they suffer no loss if they earn a return on salvage value. If the property has no prospect of salvage except through dismantling and sale for scrap, the scrap value for such of it as is to be scrapped may represent its present worth. In this case the owners were fortunate in having a potential buyer. Negotiations had long been under way. The operative properties were twice offered to the City of San Francisco for \$7,950,000 and twice the voters rejected the proposition. Ultimately the properties were sold for \$7,500,000. The evidence shows that the president of the Company reported to the directors "that the price mentioned is the amount that has been agreed upon for the purchase by the City and County of San Francisco of the operative properties of the Company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor." Upon this understanding the Board of Directors ratified the offer and directed the officers to consummate it.

It is now contended that this offer was calculated by a capitalization of earning power and that this Court condemned such a basis of valuation in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, 601, when it said; "The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated." The pronouncement in the *Hope* case was directed to a situation where the demand for the service permitted such a range of choice in rates as would greatly affect the value of the property. No such choice appears open to the appellant. Apart from a little brief war-time prosperity, it seems doubtful whether any rate would yield appellant's operating expenses.

Under these circumstances we do not find that anything has been taken from the appellant by the impact of public regulation. If the expectations of the Commission as to traffic increase were well founded, it would earn under this rate on the salvage value of its property, which is the only value it is shown to have. If expectations of increased traffic were unfounded, it could probably not earn a return from any rate that could be devised. We are

unable to find that the order in this case is in violation of constitutional prohibitions, however unfortunate the plight of the appellant.

6. The Company also contends that it is entitled to reversal because the order contemplated a test of experience, and the experiment has not taken place, and the Commission's predictions cannot be verified. However, it was the Company which defeated the experiment. A very short trial—a period much shorter than is required to conduct a litigation—would have indicated the effect of the rate reduction in stimulating traffic. But at the Company's request the experiment was stayed and then totally frustrated by the sale of the property. Under these circumstances the unavailability of experience to test the order cannot affect its validity. It might be grounds for an appeal to the discretion of the tribunal which rendered the order. It certainly is not a constitutional objection to be enforced by us.

The fixing of future rates always involves an element of prediction. Even monopolies must sell their services in a market where there is competition for the consumer's dollar and the price of a commodity affects its demand and use. This effect may be predicted or projected, but it can be known only from experience. The many detailed objections which the Company makes to the Commission's computations of probable yield would be answered by experience. There is nothing in the order which requires that the test period should be a year or any definite time, and there is no ground for assuming that the Commission would have rejected an application to make such changes in the schedule as experience might show to be necessary, in order to produce, if possible, the revenue which it found to be needed. The Commission had not in the past been indifferent to appellant's fiscal problems. Under such circumstances we think it is not forbidden by the Constitution that there be a pragmatic test of matters which even the most expert could not know in advance. Cf. *Clark's Ferry Bridge Co. v. Public Service Commission*, 291 U. S. 227.

We have considered appellant's complaints in considerable detail because the case in so many ways departs from the usual rate case. We find no constitutional infirmity in the result or in the procedure by which it is reached. The judgment of the Supreme Court of California is therefore

Affirmed.